

**Curtin Business School**  
**John Curtin Institute of Public Policy**

**Policing in the Australian Federation 1970–2010: A changed paradigm**

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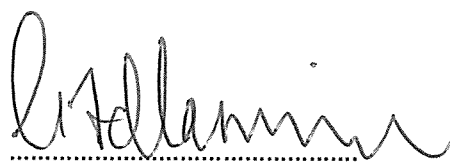
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**Doctor of Philosophy**  
**of**  
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## Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

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Date: 1 February 2015



## Abstract

Over the past 40 years policing has gone from being an almost exclusively State government responsibility to one that is shared between the Commonwealth and State governments. The extent of Commonwealth expansion into policing has been extensive and since 1979 has emerged from virtually nothing to a position of substance in the national structure.

The questions that are asked in this thesis are: *to what extent, how, and why* has policing shifted from being a strictly State and sub-national responsibility in Australia to being nationally-integrated and Commonwealth-driven?

The proposition put forward is that policing changed because the Commonwealth government negotiated a role for itself in the problem-solving of a range of new and expanding crime-control challenges faced by all levels of government. The States and Commonwealth cooperated in solving new and emerging crime problems. Responsibilities have been negotiated so all levels of policing have a clear understanding of their roles and responsibilities for policing. By contrast with centralisation trends in a number of other policy areas, this can be seen as a case of 'pragmatic' and consensual adjustment to new conditions. From a federalism perspective the changes to policing were unusual because they were accompanied by States' consent and support—a position at odds with usual fierce protection of their turf in other traditional State owned areas such as education and health.

The evidence to support this proposition is based on a range of documented experiences and facts surrounding the activities of the Commonwealth in policing and the responses of the States. The driving force used to justify Commonwealth activism concerned the fact of escalating crime problems since the 1970s, which if left unchecked would have posed serious political ramifications for governments at all levels. The problems needed to be solved and the Commonwealth has taken on the role of problem-solver in many areas of crime, with the uncharacteristic support

of the States. The new role of the Commonwealth has centralised aspects of policing and has resulted in policing being nationally integrated.

The Commonwealth government has demonstrated a deliberate policy to expand its role in Australian policing since the 1970s. It has achieved a position of prominence and equality in policing through negotiation with the States. It is now an equal with the other police agencies, with a clear allocation of responsibilities between them. This has only occurred, however, because the task itself has expanded in such a way that the growing Commonwealth presence has not involved any diminution in the traditional role of the States.

## PREFACE

Researching and writing a thesis is generally something left to the young who aspire to be the best in their field or discipline, whereas I had already finished my first working life and was assumed to be in retirement. However, some of us will never retire but just move on to another working life—one that we make on our own terms. This thesis aims to lay the foundations for my new working life!

What was my motivation to take on a doctorate? I spent my working life in policing and it was clear to me by the time I retired that there was a need to expand the body knowledge and most importantly from a personal perspective, for me to contribute to this through my intellectual and academic pursuits. Policing was always good to me and I believe I should provide something in return—to start with—my thesis. This thesis evidences my current personal and professional ambitions and hopefully, will be the beginning of a body of works dedicated to the expansion of knowledge about Australian policing.

The need to expand the body of policing knowledge in Australia is because it currently affords little academic interest and few meaningful works, if any, are produced each year. Policing is its own worst enemy as the institution itself has never made any tangible attempt to make policing a separate and unique subject within the spectrum of disciplines studied in political science, public administration or public policy. Policing is not just another government activity that can be coupled with other government activities and is a unique discipline within the scope of government domains.

Since the Peel reforms in 1829 there has evolved a body of public policy and law associated with policing that has never been drawn together into one discipline in Australia. Policing needs to be recognised as an individual discipline and have its own body of knowledge. Currently, there is no single book available on Australian policing that describes in detail the structure and operation of policing nor provides any discussion on relative theories from a political or public administration perspective—hopefully there will be one soon.

Police themselves have to take ownership of the discipline and not leave it to a few academics who attempt to maintain interest in this under-recognised area of government and politics. Police Commissioners and unions need to take the lead and use their power and influence to ensure policing becomes a mainstream discipline, and from within generate its own body of knowledge, intellectuals and academics. What other areas in government have academics and experts on the discipline that have never been practitioners?

Enough said about my motivation and aspirations, for these would come to nothing without the people behind me and those who supported and encourage my aspiration—I need to recognise those who have helped me along the doctoral journey.

I could not have begun this thesis without the encouragement and assistance of Professor John Phillimore and the staff of the JCIPP. And along the way my supervisor Professor Alan Fenna, like John Phillimore, provided critical feedback, suggestions and encouraged me to strive to produce my best work. Not being a *word-smith*, but an old bush copper who took up tertiary education later in my working life, the considerate professors', John and Alan, had to deal with my *interesting* grammar, syntax and writing style all along my journey—for that I give them special thanks.

Finally, and most importantly, without the support and encouragement of my loving wife Rosanne, I could not have finished this thesis this or achieved all of the other achievements in my professional life. Also, I cannot forget the contribution my family and friends have also made in supporting and encouraging me in my quest, particularly Lance McMahon and Leza Duplock at the JCIPP.

I would also take this opportunity to dedicate the thesis to my parents—my late father Leslie and my mother Alice. Being working class people they experienced the worst of the Great Depression then the Second World War in their early lives. They emerged from those dark experiences with hope and always recognised the greatest gift they could offer their three children was education. They saw education as a way to ensure their children prospered and would have a

better life than they had endured. They were right and education has ensured successful in all of our lives.

Getting to the finishing line has been personally a marathon journey, so it will be a memorable achievement to add to my fortunate life so far. Just as important, I hope it will add to the body of knowledge for policing and also engender interest and stimulate debate on Australian policing.

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## **CHAPTER ONE: THE NEW AGE OF AUSTRALIAN POLICING**

*Those who framed the Constitution can hardly have foreseen the motor vehicle and the aeroplane. Arrangements for the governance of State which were adequate for trade, public order and the social requirements of the nineteenth century are not appropriate for dealing with serious wrongdoing which transcends State jurisdictions and affects the interest of the Commonwealth as a whole; terrorism, narcotics, and organised crime being perhaps the three most obvious examples (Mark 1978, 2).*

### **1.1 Introduction**

Like most other areas of government business in Australia, policing has changed greatly since Federation—and especially since the 1970s. This has generally been attributed to a range of factors, including rapid economic, social and political change along with external influences such as globalisation. These factors underpinned changes in government activities and the way governments went about their business, which eventually affected policing and the way policing responsibilities were shared in the federation.

There were a number of critical events that had an important impact on the way policing is now organised in Australia. These began in 1979 when the Commonwealth government legislated to establish a new police agency and endowed it with significant powers and resources. This initiative created what soon became one of the larger police forces in the country, with sole responsibility for many critical areas of policing. It changed both the scope and range of functions that constituted Commonwealth policing and also changed the balance of power between the Commonwealth and the State governments in this area.

Commonwealth policing grew from virtually nothing in 1979 to a point where in 2010, 15 per cent of all police funding was expended in the operation of the Commonwealth's main agency, the Australian Federal Police (AFP).

By 2010, the business and responsibilities for policing no longer resembled the original structure that had lasted for over 80 years. A radical change had occurred with the Commonwealth assuming a major role and become a leader in

many aspects in an area that traditionally and constitutionally belonged with State governments. In the normal theatre of Commonwealth-State relations such changes would be highly publicised and certainly resisted by the States. What made these developments in policing so distinctive was the way they occurred in the shadows, with little public or media scrutiny or any publicised conflict between governments. It appears this change was uncontroversial and uncontested by the States.

This exploration of the development of policing provides an account of a process in Australian federalism that has been atypical when compared with the experience of other areas of service delivery. Centralisation has been an ongoing trend in policing (like many other areas of service delivery) along with national integration, but how this has been achieved appears to differ from other areas of State government service delivery like education and health.

It should be understood that *centralisation or centralised* in the context of Australian policing primarily relates to the fact each jurisdiction has only one police agency, unlike most other nations where policing is highly decentralised. The centralisation of policing, in the context of Australian federalism, indicates a trend whereby the Commonwealth government increasingly takes additional responsibility and as a consequence expands its policing agencies. This has been caused by the Commonwealth passing new criminal laws and being therefore responsible for enforcement e.g. cybercrime or crimes against humanity. Additionally, some areas of criminal law that were the responsibility of State and Territory police agencies, e.g. terrorism and organised crime, have been handed over to the Commonwealth by constitutional means via a referral of powers<sup>1</sup>.

The most notable element since 1980 concerning centralisation and the changed structure of policing in Australia is the position of the States in supporting the expansion of federal policing. *Prima facie*, this explains why this significant change took place inconspicuously. Why the States took this unusual approach to

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<sup>1</sup>This is facilitated by the application of *Commonwealth of Australia Constitution Act* (Cth) Section 51 (xxxvii)

Commonwealth activism is widely discussed in this thesis and a key component in answering the research question. *Prima facie*, the States' position appears to be a straightforward case of the States not having the resources or the political will to deal with the new and increasingly complex problems associated with crime in Australia. Cooperating and agreeing to Commonwealth expansion in policing by the States was a pragmatic and calculated policy for their own benefit. It should also be noted that in a number of areas where the scope of Commonwealth policing has expanded, this was facilitated by enumerated powers existing in these areas.

In the context of Australian federalism, policing provides a new and interesting case study characterised by the States cooperating and supporting changes that increased the Commonwealth's powers and the scope of its policing functions. This approach is not normal in the Australian federal political environment, as in areas of traditional State responsibility, Commonwealth intrusions are commonly fought off vigorously. Importantly, the case of policing in the federal political structure may also show the potential effectiveness of Australian federalism because with all the new problems and threats, the system reacted in the best possible way. Does this give rise to a new view on federalism, outside current theories that explain change in the operation of the federation?

What this thesis is about then, as gleaned from this introduction, centres on policing in Australia and how it has developed and changed since 1970. The central theme is policing viewed through the prism of Australian federalism, which is the political architecture within which all government activity operates. The fundamental research questions centre on the relationship between the national and sub-national levels of government and aim to demonstrate that policing changed because in this instance, a new approach to change the respective Commonwealth-State responsibilities and structure was undertaken by the federal partners. The result was increased centralisation accompanied by the successful national integration of policing in Australia.



## 1.2 Background

At Federation policing was an exclusive responsibility of the States and at the time there was no evidence to suggest the Commonwealth government contemplated future involvement, or that the States envisaged the Commonwealth would take on policing responsibilities in the future. The responsibility for policing in a future nation was not discussed at the federation conferences, conventions or a topic in federation referendums, prior to Federation. At Federation policing remained unequivocally a State government responsibility. It should be noted that the related areas of criminal law and courts, were not included in the enumerated powers of the Commonwealth and by default remained the responsibility of the States.

The Commonwealth Parliament's powers, as enumerated in section 51 of the Constitution, included no reference to policing and the responsibility was left as an exclusive power of the States, pursuant to section 107. The Commonwealth accepted this position in respect to policing, apart from some small and short lived ventures into policing in 1917, 1920 and 1925. This was the fundamental position of the Commonwealth government until 1957 when it made the first serious attempt to enter into policing by legislating to establish the (second<sup>2</sup>) Commonwealth Police Force, as a Commonwealth police agency.<sup>3</sup>

In 1917, 1920 and 1925 Commonwealth police agencies had been established but the government did not want the respective agencies to interfere with the general policing role undertaken by State government agencies. Specifically, in the 1925 debates concerning the formation of the Peace Officers Guard (Bruce 1925, 1875) and in 1957 regarding the Commonwealth Police Force (Spooner 1957, 592–593) the main Government speakers stated there was no intention to supplant existing policing responsibilities of State government police.

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<sup>2</sup> The first Commonwealth Police Force was administratively established in 1917 and disbanded in 1919.

<sup>3</sup> *Commonwealth Police Act 1957* (Cth)

These agencies had been formed to cater for specific Commonwealth needs at the time, notably, the protection of Commonwealth politicians and public servants; physical security of Commonwealth property and protected persons, wartime security and intelligence; and in one case the enforcement of Commonwealth laws to break the 1925 waterfront strike.

The Commonwealth Police Force was established in 1959 and proved to be unsuccessful in the role provided under its legislation for a number of reasons. Internal government reviews into its effectiveness in the early 1970s by Milte (1973), Bennett (NAA 2012c) and Mark (1978) established that the agency was under-resourced and had insufficient powers to service the policing needs of the national government effectively.

However, this was not to be the case for much longer. In the early 1970s there was a change in the approach towards policing by successive Labor (NAA 2013a and b) then Liberal governments (NAA 2012a, b and c).<sup>4</sup> Both sides of politics unreservedly committed to a policy of expanding the Commonwealth's policing role with the aim of becoming self-sufficient in this regard. This approach culminated in the establishment of a new Commonwealth government police force in 1979, the Australian Federal Police (AFP), which was sufficiently resourced and empowered and encouraged to become a leading police agency. It is noteworthy that since the formation of the AFP, Commonwealth policing has enjoyed bipartisan support. From a public policy perspective, this bipartisan support has been critical, as it provided policing with continuity in direction even as governments have come and gone.

The development of a fully functional Commonwealth agency changed policing in terms of the Commonwealth-State arrangements and resulted in policing shifting from a sub-national area of government responsibility to one operated concurrently by both tiers of government. Policing became national in character due to this Commonwealth policy shift.

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<sup>4</sup> A number of the National Archives documents are located at Appendix F, to assist the reader.

This shift was driven by the Commonwealth's policy to provide policing services in its own right and on its own terms as expressed in the Second Reading speech concerning legislation to establish the AFP, in which one of the aims of the new police agency was to "more effectively and economically co-ordinate police resources in the Commonwealth area" (McLeay 1979, 292). This change to policing began in earnest after 1979 as the scope and range of Commonwealth policing functions and tasks expanded and changed considerably. It also resulted in the Commonwealth's police agency operating as an equal with the other police agencies across the nation. The evidence of this equality is discussed in detail in the later chapters and is simply illustrated at this point by the fact the first national police ministerial council (still operating today) was formed in 1980 with the AFP having equal standing with the other police jurisdictions (NAA 2012f).

This expansion reached the point in the new millennium where the Commonwealth now takes responsibility for a number of policing areas that previously belonged to the States, along with responsibility for many new areas of policing. The expanded scope of Commonwealth policing is evidenced by the parallel expansion of Commonwealth criminal laws and the obvious need to enforce those laws. Prime examples of this have been additional offences created in the *Crimes Act 1914* (Cth) and in 1995 the Commonwealth legislated its own criminal code, the *Criminal Code Act 1995* (Cth). There has been a significant amount of new criminal offences and powers created for which Commonwealth policing has the sole responsibility for enforcement, and which were hitherto non-existent or previously considered a State responsibility. Examples of this include legislation covering cybercrime; crimes against humanity; drug trafficking; organised crime; and terrorism.

Of particular significance is the fact that this expansion of policing responsibilities has not been driven unilaterally by Commonwealth governments and in some recent aspects has been at the invitation of the State governments. In the case of two crucial areas of criminal activity—terrorism and organised crime—a seldom used constitutional mechanism was employed by the States in 2002 and

2003 respectively, to refer responsibility to the Commonwealth government under section 51 (xxxvii) of the Constitution. This referral of State criminal law has been described as “a Commonwealth phenomenon” (Williams 2011, 1152), which recognised the use of this mechanism to be unusual in the normal course of Commonwealth-State relations and how change was usually facilitated between the federal partners.

### **1.3 The Research Question**

Responsibility for policing in Australia has changed substantially since 1901, with current arrangements clearly very different from those intended by the Constitution. In this respect, policing is not unlike a number of other policy areas where equivalent or greater amounts of centralisation have taken place. However, it would seem that an unusually large amount of this centralisation has taken place in policing with the active support or consent of the State governments—evidenced by the States voluntarily handing over specific criminal law powers to the Commonwealth. Such an unusual approach by the States resulted in the scope of Commonwealth policing expanding at the expense of State policing. The States’ behaviour was certainly different to what would be expected when such matters are negotiated between the Commonwealth and the States.

Exploring the relationship between policing and federalism provides the central theme for the research and requires that a range of matters relating to Commonwealth-State relations are explored in order to better understand the journey of Australian policing from 1970 to the present. This exploration leads to the main research question, which asks:

**To what extent, how, and why has policing shifted from being a strictly State or sub-national matter in Australia to being nationally-integrated and Commonwealth-driven?**

Underpinning the fundamental question is a set of propositions about what is known about developments in contemporary policing, within the political setting

of Australian federalism. These propositions are the starting point to investigate and analyse the recent journey of Australian policing. There are five propositions:

- Since 1979 policing has changed from a State responsibility to one shared with the Commonwealth.
- The powers, resources and responsibilities of Commonwealth policing have increased disproportionately in comparison with State police.
- While increased centralisation is often characterised by conflict and resistance by the States, played out publicly and in the political arena, Commonwealth expansion into policing has been far more consensual.
- Since 1979, Commonwealth expansion into policing has and continues to enjoy bipartisan political support by the main federal political parties.
- Centralisation of policing is a trend that other western democratic federations have also experienced, regardless of decentralised policing structures and entrenched anti-centralisation political ideologies.

Apart from the research question and the underlying propositions that centre on the change to policing, the thesis aims to investigate the role of federalism in the change to policing in Australia. *Prima facie*, it appears there is no single federalism description or theory to exactly explain or account for the journey of policing, although some aspects of the foremost descriptions like cooperative/executive federalism or opportunistic/coercive federalism, may well provide a partial explanation of how policing changed. The other aspect of federalism is to consider the contemporary drivers of change associated with policing and other like areas of government activity. Why policing changed is explained as being driven by the need for governments to solve problems. In particular, the rapid increase in crime and several terrorism and organised crime focusing events, have been pivotal.

The proposition adopted here is that federalism has influenced policing and that it has been characterised by the States cooperating with the Commonwealth to overcome pressing problems (in this case dominated by increases in crime on a national and international basis). This approach has led to increased centralisation

in some circumstances and ensured the operation of police services in a nationally integrated manner, while retaining States' responsibility for the majority of traditional policing functions. The police case study will show a different view of federalism than would be expected in the normal course of Commonwealth-State relations.

## **1.4 Outline and Structure**

The thesis has seven chapters and six appendices. This first chapter introduces the topic of the thesis and outlines the theme and primary research question. The next chapter provides the thesis foundation by defining the central theme of *policing*, which is essential for further analysis and discussion in the later chapters. This is followed by identifying the key characteristics of Australian policing by defining the three key organisational characteristics—*Establishment, Governance and Jurisdiction*, and then describing the *Functions* the respective police agencies undertake. Having a clear picture of policing is critical in order to understand the recent developments and changes it experienced within the context of the operation of government and the Australian federation.

Chapter Three concerns federalism. The chapter begins by exploring federalism in a general sense and then considers the mechanisms and drivers of change affecting Australian federalism in respect to the division and balance of power between the Commonwealth and the States. This is followed by discussion concerning the nature and characteristics of Australian federalism by considering a range of descriptions and views on how federalism operates and explanations of what drives change. This section incorporates contemporary literature concerning Australian federalism. The chapter concludes by considering two comparative areas of government service responsibility: Education and Health. Constitutionally, these were both areas of State government responsibility with a history similar to policing. At Federation they were a sole State responsibility, but since have become a concurrent area of responsibility. Consideration of the experience of these two prominent and largest areas of service delivery in Australia, in the context of

federalism, is enlightening because it demonstrates how centralisation has been achieved by the Commonwealth in these areas. Importantly, it paves the way for the following chapters to analyse the development of policing in the context of federalism and to assess whether the journey of policing since 1970 has been undertaken differently.

Chapter Four identifies the changes to the structure of policing between 1970 and 2010 and considers the milestones and events critical to that transformation. A historical narrative of policing from Federation to 1970 provides clear evidence that the policing model has substantially changed from the original State government-owned and operated model. The chapter then considers the most significant change, identified as the expansion of Commonwealth policing in terms of its scope and range of functions after 1979. The policy for expansion had its genesis in the Whitlam Labor government (1972–1975) and built up momentum under the Fraser coalition government and culminated with the 1979 passing of legislation to establish the AFP.

The establishment of the AFP is identified to be the critical event for policing, for it signalled the Commonwealth was taking a major role in policing as an equal with the States and Territories. From then on, significant growth of Commonwealth policing has occurred to the extent that by 2010 it was an essential and crucial component in the structure and operation of Australian policing—in effect, policing became nationally integrated. This leads to the next chapter that examines the new policing paradigm in Australia and its drivers.

Chapter Five draws on the two previous chapters and identifies the drivers of change to Commonwealth policing and their relationship to constitutional and sub-constitutional processes and institutions in the context of Commonwealth-State relations. The drivers of change are clearly identified as Commonwealth centric and surprisingly have enjoyed unexpected support from the States. An important conclusion here is that the means of change differ from what would be expected in the normal course of undertaking functional changes by government agencies in the federal political environment. This array of changes also

demonstrates the effectiveness of Australian federalism in responding to the significant changes in crime and its consequences.

The findings of the analysis concerning drivers also provides a major benefit for the body of police knowledge in Australia as currently significant gaps exist in this area. Importantly, the chapter sets the scene for the conclusion in identifying how and why policing changed and the ramifications for Australian federalism.

Before reaching the concluding chapter, the penultimate chapter (Chapter Six) undertakes an international comparison of Australian policing with four other like federal nations. The point of this comparison is to ascertain if there is evidence to support the findings of the analysis of the Australian experience. The chapter compares policing in the four nations in terms of their experiences over the past 40 years, and pays particular attention to the extent of centralisation and the expansion of federal policing responsibilities and functions. The chapter's methodology involves an analysis of policing in respect to the national constitution and practical application of policing—the difference between theory and practice—in order to identify the model of policing and the changes that have occurred in recent times. The nations of Canada, Germany, Switzerland and USA are considered as they have federal political systems and policing operates within a similar western democratic political and legal framework.

The police institutions of the four nations, like Australia, are formally linked by an international legal framework derived from international treaties that facilitates policing between the nations. This linkage between national police agencies is a product of globalisation and is critical to facilitate effective policing operations across the five nations. Importantly, this chapter also demonstrates the effectiveness of Australian federalism in coping with the changed environment for policing.

The point of Chapter Six is to explore the experience of policing in these nations in order to ascertain if their experiences provide evidence supporting the findings concerning Australian policing and the role which the operation of the type of federalism in a nation has played in change. In particular, was centralisation a



trend identified by the comparison and what role did the federal political system play in the development and change in policing?

The final chapter draws together the discussion and key findings from the preceding chapters to address the primary research questions. The chapter is structured around the theme of federalism and aims to answer the key question regarding the extent, how and why Australian policing changed over the 40-year period. The key findings elicited from the previous chapters concerning the altered policing model are considered against the constitutional responsibilities and arrangements between the Commonwealth and the States. Fundamentally, the changes in policing are considered through the prism of federalism and the implicit political relationships within the framework of government in Australia.

In order to understand the change to the policing model and the resulting paradigm shift, contemporary federalism descriptions and explanations are considered and matched against the known policing experience and developments identified in the previous chapters. Ostensibly, it would be expected that the changes to policing would be consistent with the changes in federalism and the centripetal trend being driven by the Commonwealth due to a range of conventional explanations. The analysis undertaken using these descriptions favoured the cooperative federalism explanation to describe how the change was facilitated. In the case of explaining the drivers of change to policing—why it occurred—*pragmatic federalism* offered a viable explanation.

Additional factors also appear to have been at work in the case of policing that centre on two critical events. Firstly, the 1979 decision by the Commonwealth Parliament to establish the AFP, which enjoyed the support of the main political parties, was the beginning of effective federal policing. Secondly, the 2002 Leaders Summit resulted in the States taking the unusual step of handing over to the Commonwealth responsibility for important areas of criminal law. This later occurrence again evidenced the atypical experience of policing in comparison to like areas of government service delivery and offers something uncommon for federalism scholars to ponder.

This discussion on policing and federalism also establishes that the Australian system of federalism has been effective in the case of policing. It has allowed policing to respond to the challenges faced by all governments after the 1970s. Conventional views on how federalism operates to change policy areas, as discussed previously, have relevance but are not conclusive in the case of policing. Policing cannot be aligned with one specific view but can be matched to some but not all of the characteristics of the competing explanations of changing federalism.

This leads to the conclusion, which answers the primary research question and puts forward the opinion that policing has demonstrated a different federalism experience, characterised by the paradigm shift in policing. Importantly as a corollary for the thesis, the research provides policing with new data and information to fill many of the existing gaps in the body of knowledge.

There are also six appendices, which are listed in the following table.

<b>Appendix Subject</b>	<b>Content</b>
<b>A Statistics</b>	This provides a number of statistical analyses in respect to policing using specific data on personnel and funding in respect to the eight Australian police agencies. In addition a number of comparative statistical analyses are provided, which use Consumer Price Index (CPI) and Population data as it relates to the two policing data sets. A range of tables and charts in the Appendix are used in various chapters of the thesis.
<b>B Colonial Policing</b>	This concerns Colonial Policing in Australia and explains the background to post-Federation policing. This is important as the highly centralised nature of Australian policing is the direct product of the development and reforms related to colonial policing.
<b>C Statutory Provisions of Australian Police Agencies</b>	This details the current statutory provisions relating to the functions of Australian police agencies.
<b>D Commonwealth</b>	This is a summarised history of Commonwealth criminal law reform from 1980 to 2010 and is derived from a Parliamentary

<b>Criminal Law</b>	Library electronic document concerning the “History of criminal law” (Parliament of Australia 2013).
<b>E Terrorism and Organised Crime Inter- government Agreements</b>	<p>This provides copies of three documents referred to in a number of chapters. They are:</p> <ol style="list-style-type: none"> <li>1. Communique from Leaders Forum 4 April 2002</li> <li>2. Agreement 5 April 2002</li> <li>3. Agreement 25 June 2004</li> </ol>
<b>F National Archive Documents</b>	These NAA documents are key documents and referred to in most chapters and are provided for ease of reference as access to the documents can be difficult and time consuming.

## **CHAPTER TWO: DEFINING AND DESCRIBING AUSTRALIAN POLICING**

### **2.1 Introduction**

There are two aspects to this chapter: defining the central theme of policing and identifying and describing the Australian policing structure and the model that currently exists.

*Policing* is a generic term and its precise definition varies depending on the discipline being considered—sociology, political science or public administration. As well, it also varies in respect to the relationship with the political system, as in many nations policing is provided at a local government level and even to a large extent by private providers. The organisational and functional characteristics of policing agencies are also critical to the definition. Thus, the aim of the chapter is to consider all of these contextual matters and establish a working definition to be used and applied consistently throughout the chapters. Following on from setting a definition is the identification of the contemporary structure and model of Australian policing.

### **2.2 Defining Policing**

The definition of policing differs between nations and their polities for a variety of reasons, principally because of the terminology. For example what is termed *policing* is also termed internal security; justice and public order; law enforcement; and public safety—both in Australia and other western nations.

Relevant to the definition as it applies to Australia, is the assumption that the business of policing is a government responsibility. This is derived from the fact that all Australian police agencies have been established by legislation and this licenses them as a virtual monopoly to undertake the business of policing in their jurisdiction.

To begin, consider the definition in the English *Dictionary of Policing* (Wakefield and Fleming 2009, 232) that in broad terms asserts, that policing “will

always be what police officers do". Fleming and Wakefield consider policing to have changed substantially over the past 20 years because of a range of social drivers: "Globalization, neo-liberal politics, increasing prosperity, geographical and social mobility, the breakdown of the nuclear family, the decline of the welfare State, terrorism and technology" (Wakefield and Fleming 2009, 233) have changed society and accordingly what police do—the business of policing.

Policing has also changed in respect to providers of policing and is defined in terms of public and private policing and this pluralism influences the general definition in many nations. However, public policing is the primary focus in this thesis although private policing is gaining impetus in Australia, as noted by Sarre: "We live in an era of public and private regulatory flux. The upshot of this is a society in which policing is now conducted not just by those people commonly referred to as 'the police' but by a host of private and non-government operatives who use a range of empowerment tools and resources at their disposal, not just the criminal law. This trend is set to continue." (2002, 10) Clearly, public policing has to work with private policing but in the context of this thesis public policing is the focus.

From a sociological point of view public policing is defined somewhat differently, with a greater emphasis on the power relationship between citizens, communities and government. A study investigating and comparing Anglo-American policing (Manning 2005) defined a police agency to be: "a legitimate, bureaucratically articulated organization that holds out fatal force in control of political order" (Manning 2005, 41–42). Crawford, a criminologist, considered policing to broadly involve a set of activities and processes" (Crawford 2004, 137) that can be undertaken by public and private agencies or individual citizens or groups of citizens. The agencies established provide staff and resources to "police the broad mandate of crime control and order maintenance" (Crawford 2004, 137). This approach considers there are two aspects to the definition of policing: *organisation* and *function*, which set the parameters for what is policing.

*Organisation* concerning policing is “the relationship between particular policing organisations and the State or market” (Jones and Newburn 1998, 202–203). In the context of Australia this important relationship is between the eight Australian police agencies and the respective governments.

Organisationally, from an Australian perspective the relationship between the respective police agencies is not always linear and clear-cut as there is a blurring of functions between jurisdictions because Australia is a federation and overlap of laws and jurisdiction is common place. For instance this is exemplified by criminal law which, unlike many other nations, does not rest with the national government. Thus, across Australia there are nine separate criminal law jurisdictions with the Commonwealth criminal law operating concurrently with State and Territory laws. One noted lawyer and Chair of the NSW Law Reform Commission, James Wood QC, commented that the criminal law in Australia should be unified into one set of laws. In an interview for the Sydney Morning Herald he rationalised “there’s a huge case for there to be unification of the criminal code” (Dick 2007, 3) as “each of the states, territories and the Commonwealth has different criminal law. The difference can be significant, with penalties varying between states.” (Dick). This creates potential for duplication and conflicts for policing where offences go beyond a single jurisdiction.

One view in support of uniform laws that demonstrated its benefit was provided by the Commonwealth Attorney-General in 1995: “Our law enforcement agencies operate under a confusing array of State, Territory and Federal laws. In a number of areas, uniform national laws would be of special benefit to Australia’s police and courts. Uniform laws will provide the justice system with certainty and stability. They will also enable us to develop effective strategies to combat violence generally and especially against women and children. For example, the Commonwealth has secured State and Territory agreements to make domestic violence orders portable in order to remove conflict between domestic violence and family law orders” (Attorney-General 1995, 1).

The scope of policing considered in this thesis from an organisational perspective focuses on *public policing*, which involves a statutory authority operating within a legal framework with the agency accountable to government. The functions undertaken by police are limited to those authorised by law: “The distinguishing feature of public police is that they exercise authority (in the name of the state) over the civil population” (Wakefield and Fleming 2009, 232).

*Function* is also identified from predominantly formal government sources: legislation, annual reports and budget papers. Consideration of these sources indicate that the range of police functions includes the investigation and prevention of crime (including terrorist offences classified as crimes) and road traffic offences; maintenance of public order and safety; and the provision of support services for police operational activity. This range of functions provides a broad definition of what policing currently involves and it must be understood this will probably change from time to time due to the dynamics of the environment in which policing (and most other government services) operates.

The changing environment for police means that many of the tasks police undertook 40 years ago were different from those today, although many fundamental tasks remain. What constitutes policing is best viewed in general terms of scope and range of activity and specifically, in the context of Australian federalism, provides a scope that falls within the government framework and a range of functions authorised by law and funded by the public purse. Thus, policing for the purposes of the thesis is defined as:

A government-operated service comprising functions undertaken by police officers and support staff involving the prevention and investigation of crime (including terrorist offences classified as crimes); maintenance of public order; road safety and traffic enforcement; and provision of related support services. The provision of support services for police activity is a significant part of the whole. Support services include: criminal intelligence; information management and exchange; investigation support using all disciplines of forensic science; research and development; training and education (to name the main areas, this is not all inclusive).

As noted in Chapter One, a comparative analysis of the Australian policing model and the related experience over the past forty years is undertaken with the federal nations of Canada, Germany, Switzerland and USA in Chapter Six. The comparison uses this definition of policing, although an exact comparison of what constitutes policing in these nations is not always possible.

Now the definition of policing has been provided, what logically follows is to describe the *organisation* and *function* of Australian policing, but before getting to this point, it is worthwhile to briefly consider colonial policing. The development of policing from settlement in 1788 to Federation provided the foundation for policing at nationhood and many characteristics of colonial policing continue to the present. For example, by 1898 all the colonies had centralised policing—each had only one government-operated agency responsible for policing across the colony (later State).

### **2.3 Australian Colonial Policing**

At Federation each of the colonies operated a highly centralised police structure and had only one police agency. This aspect of the respective model of policing was brought to each State and has continued on to the present. A comprehensive history of the development of colonial policing is provided in Appendix B.<sup>5</sup> Constitutionally, all of the colonial police forces that seamlessly became State forces at Federation. They all had a statutory basis and governance was on the face of it vested in the Crown and the jurisdiction of the police was restricted to the State border. The functions of the forces mirrored each other and were focused on maintaining basic law and order. The most important features inherited from colonial policing that continued on to the present were centralisation and ownership of policing by government. This colonial legacy has shaped the major

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<sup>5</sup> The discussion and description of colonial policing used in this section of the chapter and the Appendix is drawn from a range of works listed in the Bibliography and includes books and book chapters by: Bryett, Harrison and Shaw (1994); Finnane (1994); Milte and Weber (1977); and Sturma (1987). Also used was the range of colonial legislation and parliamentary debates at the time relating to Figure 1 of Appendix B.



characteristics of Australian policing and in many aspects has been passed into the organisational DNA of the eight agencies.

## 2.4 The Structure of Australian Policing<sup>6</sup>

The Australian policing structure has changed since Federation with the most significant changes occurring after the late 1970s. One of the most important changes occurred in 1979 with the Commonwealth establishing the Australian Federal Police (AFP). This was a new police agency that was provided with functions and powers to match its State and Territory counterparts. Drawing from the Mark report, related cabinet papers and *Australian Federal Police Bill 1979* (Cth) explanatory memorandum and debates (Mark 1978, NAA 2012a; Explanatory Memorandum 1979), it is considered the primary goal of the AFP, was for the first time to provide the Commonwealth government with its own police agency that would satisfy the whole of its law enforcement requirements along with the every-day policing services for the Australia Capital Territory and other territories (excluding the Northern Territory). Once this goal was achieved it would result in the Commonwealth government no longer relying on State and Territory police agencies to service its policing needs. The Second Reading speech supported this proposition when the Minister referred to the functions of the AFP: “In the main they provide for the functions associated with the policing of the ACT, the investigation of offences against the Commonwealth and the protection and

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<sup>6</sup> One of the challenges with describing the structure of Australian policing is the dearth of literature on the topic. Policing has over the past 40 years generated scant academic interest and few works can be located concerning it in comparison with other areas of government. The available works are generally not within the scope of political science, public policy or the specific topic of federalism and where they exist are concerned with aspects of public administration, criminology and management. Regardless of this shortfall there are still some works, many aged, sourced for information to describe Australian policing. These include articles, book chapters and books included in the Bibliography. Important sources for the chapter have been: *A History of the Australian Federal Police*; a range of Internet documents from the Commonwealth Attorney-General's Department; Baker's *The reinvention of Australian Federal Policing in the pursuit of national security*; Finnane's *Police and government: histories of policing in Australia*; Manison's *Managing Australia's Police*; two books by Kerry Milte; Pitman's *An independent model for police executive relationships*; and Wettenhall's *Government and the Police*. Accompanying these sources have been additional sources found in the Bibliography that include a range of parliamentary debates, explanatory notes and memorandums for bills, Commonwealth cabinet papers and newspaper articles.

safeguarding of the Commonwealth's interest" (McLeay 1979, 2093). This initiative was the culmination of a major policy shift by successive Commonwealth governments, first publicly advocated in Gough Whitlam's electioneering speeches of 1972 (Whitlam 1985) and later developed further in 1976 by the Liberal government of Malcolm Fraser (NAA 2012b and c). Subsequently, in 1979 Commonwealth policing became part of the machinery of the federal government.

Since that change there has been an exponential increase in funding for Commonwealth policing and also in the scope and range of its police functions and powers. From a public policy perspective this has led to a significant change for the policy domain as for the first seventy-eight years of Federation, policing policy and the responsibility for service delivery belonged to the State governments. After the AFP was established, the Commonwealth government undertook another initiative and invited the State and Territory governments to establish and participate in a national policy making forum, solely focused on policing (Coad 1994; Baker 2004; and NAA 2012e). The Australian Police Ministers' Council (APMC) resulted and continues to operate—although under a different title, the *Standing Council on Police and Emergency Management* (SCPEM). Importantly, from a political and public policy perspective this initiative placed the Commonwealth police agency on an equal footing with the other jurisdictions and can be interpreted as the States' recognition of the legitimate role to be played by the Commonwealth in policing. Whether the States actually understood the full ramifications of their actions is unclear but the consequences have been far reaching and are described in the later chapters.

## **2.5 Policing and Government Bureaucracy**

Within the framework of Australian government, police agencies have generally been perceived and taken for granted as just another government department, meriting no special recognition or position within the operation of government services. However, police agencies are not the same as other government departments and police officers are not public servants (Wettenhall 1977; Plehwe

and Wettenhall 1979; and Manison 1995). These differences are identifiable by the way police agencies have been established and staff employed. Each of the eight jurisdictions has a specific Act of Parliament for their police agency. Included in the Act is the formal establishment along with provisions for the employment of police officers from commissioner to constables and the detailing of the powers concerning their roles and responsibilities. Australian police agencies are classified as *statutory authorities*, which mean they have been created by statute as an individual agency with a specific function and they operate outside the general public service structure. Critically, policing in theory is not subject to mainstream public sector arrangements and direct political governance (Wettenhall 1977; Plehwe 1979; Manison 1995; and Fleming 2004). The practical situation is that politicisation and the challenge to police independence has been a developing matter and has attracted some academic interest. Discussion on this issue and how it impacts on policing is considered later.

The fact of having its own act for establishing the police agency, providing special arrangements for leadership, governance, management and appointment of staff, exemplifies the primary difference from the general public service. Major differences include the departmental head—the Police Commissioner—being appointed by the Crown and not the responsible Police Minister. While promotions and senior appointments within the agency are distanced from political involvement (Manison 1995, 497; Findlay 2004, 30–33), in reality executive promotions are being influenced “by political influence” (Pitman 2004, 117).

The formal basis of independence from political influence stems from police officers swearing an Oath to the Crown to uphold the law and to use their powers fairly and without prejudice or bias. The fundamental tenet for policing is that from commissioners to constables, police are employed by the Crown and individually swear an oath in respect to the exercise of their powers, for which they are accountable at law and not to the Government (Underwood 2005). The respective police Acts require that every officer must take the Oath in order to empower them

as a police officer. This aspect of government employment sets police officers apart from other public servants.

Since Federation, Australian courts—including the High Court of Australia—have in judgments concerning policing and government, recognised the unique characteristics and arrangements for policing in contrast to mainstream departments and public servants.<sup>7</sup> Much of the difference centres on the notion that the government of a democracy like Australia should not politicise the police. Pitman has argued that there are two competing governance models relating to police commissioners—“dependency and independency models” (Pitman 2004, 116). The relationship between commissioner and minister is the central feature of the two models and the contentious issue in the relationship is the extent to which the commissioner is subject to directions of the minister (Pitman). Thus, *independence* of the police agency from political direction is the key theoretical characteristic (Reiner 1996, 168–176) of the Australian arrangements with governments (Fleming 2004; Fleming and Rhodes 2004; Kerr 1994) and an important feature of the national policing structure.

Police being *independent* is not the reality in Australia, as governments exert substantial influence on police commissioners and the operation of agencies by the minister’s provision of finance (Fleming 2004, 70) along with the government’s legislation and policies. Interestingly, the issue of police independence is not restricted to Australia but is topical in many other western nations. Sossin (2007), in his discussion concerning Canada, best described the issue: “can the need for the police to remain above partisan politics and beyond manipulation by the government of the day be reconciled with these mechanisms of governance and accountability?” (Sossin 2004, 8).

Finally, in respect to the whole operation of governments in Australia, the fact is police operate more independently than the mainstream public sector. This difference has been recognised and traces back to the independent nature of

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<sup>7</sup> *Jarratt v Commissioner of Police (NSW)* [2005] HCA 50; (2005) 224 CLR 44; (2005) 221 ALR 95; (2005) 79 ALJR 1581 (8 September 2005) and *Enever v R* (1906) HCA 3; (1906) 3 CLR 969 (12 March 1906).

policing. Police agencies are not just another department nor are police officers public servants. There is a significant difference because of greater freedom to operate outside the direct control of the government of the day (Wettenhall 1977; Manison 1995; Pitman 1999; Pitman 2004).

Regardless of the demarcation from the mainstream public service, policing continues to move closer to the dependency model and this has been pointed out by Pitman (1999 and 2004) and Fleming (2004). Any notion of policing in Australia operating independent of the government of the day is incorrect as ministers are becoming more influential.

## **2.6 The Size of Australian Policing**

As mentioned previously, there has been scant research and therefore a paucity of literature available concerning Australian policing and it could be speculated this is due to it being an insignificant area of government activity and of no special significance. One means of testing this perception is to consider the size of the policing sector as a component of government in terms of the most basic measures of government resourcing: funding and personnel numbers. The relevant data sets are found in government budget papers along with a range of reports concerning policing published annually by the agencies themselves. Independent analysis of that data concerning policing has also been published on a regular basis by the Australian Bureau of Statistics (ABS) in its *Year Book* series and the Productivity Commission's *Report of Government Services* series.<sup>8</sup> (Appendix A provides a detailed statistical analysis of the range of data provided from these and other sources.)

A recent snapshot of funding shows that the Commonwealth government spent \$1.4b on policing (Australian Government 2009b) in 2009–10. It also provided State governments with special purpose funding of \$293m for policing.

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<sup>8</sup> Appendix A is the source of data and information used in this and other chapters.

The total picture for Australian policing in 2009–10, based on the *Report on Government Services* shows that in total the Commonwealth and State governments spent \$8.24 billion on policing (5.5 per cent of total government spending). In total 64,830 staff (Productivity Commission 2011, 6.5) were employed in operational policing functions in the States and Territories (this total excludes AFP personnel working outside the ACT community policing role), while the national police total, including the AFP, is 69,728 (see Table 1, Appendix A). The operational total translates to a *per capita* ratio of 262 operational police officers per 100,000 of population (Productivity Commission 2011, 6.5).

To put policing expenditure into perspective (\$8.24 billion) in respect to its comparative size with other areas of government service provision, the amount of expenditure by the governments (derived from the 2009/10 *Report on Government Services*) over the same period for other services included:

1. \$38.9 billion on schools—25.8 per cent total expenditure
2. \$31.36 billion on public hospitals—15.4 per cent total expenditure
3. \$7.5 billion on primary and community health—4.9 per cent total expenditure

A review of State government budgets consistently shows policing was either the third or fourth highest expenditure item in 2005–06 and 2009–10 financial years.<sup>9</sup> As a stand-alone expenditure, apart from education and health that absorb about 50 per cent of annual budgets, policing is clearly the next highest departmental expenditure.

A noteworthy point with police funding has been the rapid growth in most jurisdictions since 1993, demonstrated by Figure 2.1, showing the funding increases for police agencies from 1993/94 to 2009/10. To put some perspective into the chart, both the Australian population<sup>10</sup> and Consumer Price Index (CPI) growth rates

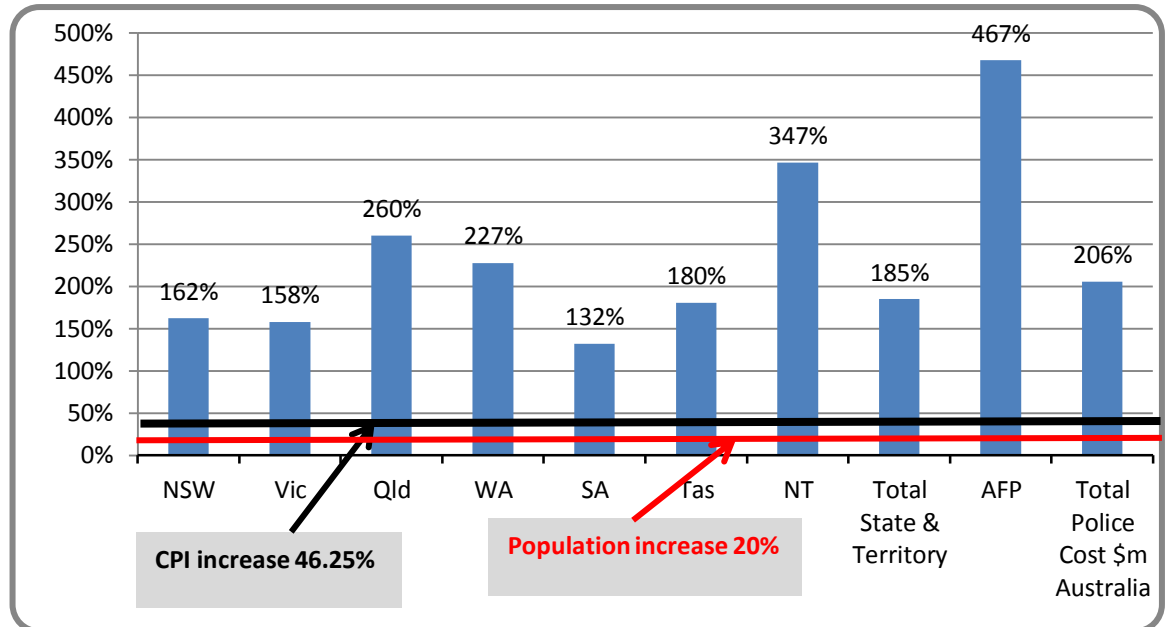
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<sup>9</sup> Based on review of the six states' annual budget statements for 2005–06 and 2009–10.

<sup>10</sup> It should be noted the actual growth rates of population differed for States and the States and Northern Territory with the largest population increases also had commensurate funding increases.

are included. As this shows, police funding increases were far in excess of the respective growth rate for population of 20 per cent and CPI 46.25 per cent.

**Figure 2.1: Australian Police Agencies Funding 1993/94–2009/10**



## 2.7 Describing Australian Policing

There are a number of important changes and developments shared by the eight Australian agencies since 1979, which together have resulted in the current structure and policing model. The main characteristics of policing are:

1. Public policing is owned and operated exclusively by the Commonwealth, State and Northern Territory governments;
2. Since 1979 all police agencies have grown substantially in respect to the scope and range of policing activity and in turn continue to receive additional funding;
3. The growth of Commonwealth policing has been disproportionately larger than the sub-national agencies' rate of growth; and
4. From a public administration perspective police agencies and police officers are structured and employed differently from the mainstream public sector. Policing is given greater independence and distanced from direct political control.

These factors are relevant to the existing policing model, but they are superficial and in order to get a more detailed description of what constitutes policing a more detailed analysis has to be undertaken. The means of doing this is to consider policing in the context of *organisation* and *structure*. By analysing the development of policing in organisational and functional terms this has the added benefit of also exposing key legislative and political matters that have underpinned the evolution of Australian policing.

The identification of three dimensions for organisation and a single dimension for function is applied in analysing Australian policing and was developed from the previous discussion on defining *policing* by Crawford in section 2.2. The dimensions have been developed on the basis they are common dimensions used in legislation and in many cases they are found in existing literature on Australian and international policing. The dimensions for *organisation* are: Establishment, Governance and Jurisdiction. Function stands alone in its own right.

## **2.8 Organisation of Australian Policing**

The three dimensions are the product of legislation as this is the primary source, along with aspects of the common law and doctrine concerning government in Australia.

### ***2.8.1 Establishment***

*Establishment* concerns the statutory and legal framework provided under the respective jurisdiction's constitutional processes and institutions. This encompasses police agency legitimacy that emanates from the jurisdiction's constitution authorising the respective parliaments *to make laws for peace, order and good government* (or expressed with similar words). All the constitutions relied upon were post-Federation except for Western Australian Police that relied on pre-federation colonial legislation—section 2 of the *Constitution Act 1889* (UK). The Northern Territory police agency originally established administratively by the



Commonwealth in 1926 was re-established legislatively in 1978 as a consequence of the Territory's self-government legislation.<sup>11</sup>

Effectively, this is the government procedure that licenses police agencies and in turn police officers to operate. It also has the effect of setting the boundaries for what police agencies and their agents are permitted to do by law. As stated by Ratnapala and Crowe, the powers of an Australian police officer i.e. Commonwealth, State or Territory: "According to the cardinal common law rule recognised in *Entick v Carrington*,<sup>12</sup> a police officer or official has no power to violate the rights and freedoms of a citizen without the authority of the law " (Ratnapala and Crowe 2012, 114). In the exercise of lawful authority by police officers, in essence they can only do what is permitted by law (common and statute law).

The structure and contents of the eight separate pieces of legislation are very similar as illustrated in Figure 2.3 at the end of this section. The legislation creates a legal entity that is provided with a title and is effectively empowered to undertake the business of policing within the jurisdiction. The legislation centralises policing and also provides legitimacy to the structure including a military style rank structure that forms the foundation of the employment and operational structures for police agencies (Manison 1995, 496). The only agency which has tried to change its employment structure has been the AFP that has gone towards a flatter and less hierarchical structure (Baker 2004, 150).

Linked to the establishment legislation in all Acts are a range of matters which concern other dimensions. Specifically, all the Acts authorise the appointment of the Commissioner by the Crown. Flowing from that is direct or indirect reference to the *functions* the agency is authorised to undertake. The *governance* dimension is coupled to the Commissioner and the relationship of that office with the political head of the police agencies—the Police Minister. *Jurisdiction* is linked by the explicit sections as to the powers of officers and

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<sup>11</sup> *Northern Territory (Self-Government) Act 1978* (Cth)

<sup>12</sup> (1965) 19 St R 1029

authorisation of special constables and the like, which is based upon geographic boundaries of States and Territories.

For the purposes of describing policing and the subsequent model, *establishment* is a critical dimension that provides an exclusive licence to the agencies to go about the business of policing in a relatively uniform way. The agency's establishment by legislation ensures they are legitimised and what activity undertaken in respect to the other dimensions is constitutional. *Establishment* also provides legitimacy to the structure and provides the powers that police officers rely on to carry out their duties.

### **2.8.2 Governance**

*Governance* concerns the formal management of police agencies and differs in many respects to how agencies in the private sector and most other public sector agencies are governed (Fleming 2004; Fleming and Rhodes 2004; Pitman 2004; and Wettenhall 1977). The most exceptional characteristic of police agency governance is the relationship between agency head (Commissioner), the Crown (Governor-General, Governor or Administrator) and executive government (Minister). This triangular relationship provides a degree of ambiguity in the governance of police agencies. The legislative wording pertaining to the governance of the eight agencies differs between jurisdictions as provisions in the respective police Acts are not identical. However, in effect the provisions are relatively common but in some cases the arrangements for governance are blurred due to the role provided by the legislation for the Crown *vis-à-vis* Police Minister. Fundamentally governance centres on "the relationship between Australian Police Commissioners and their political masters" (Fleming 2004, 61). Primarily the political control of the police in a jurisdiction is established by the governance provision in the Act, but the law is ambiguous in most cases (Fleming, 2004). The table below sets out the respective jurisdictions' legislative position concerning the Police Minister's power to direct the Commissioner of Police.

**Figure 2.2: Power of Police Minister to Direct Commissioner**

Commonwealth	NSW	NT	QLD	SA	TAS	VIC	WA
S. 37	S. 8 (1)	Nil	S. 4.6	S. 6 & 8	S. 7	Nil	Nil

It should be noted in the case of Western Australia under section 9 of the Act, the Commissioner requires the approval of the Minister in respect to rules and general orders etc. concerning members. This implies the Minister has a tacit role in governance but the extent of this is not clear.

Fleming (2004) saw the relationship between commissioner and minister as the central feature for governance and this was characterised by “uncertainty” (Fleming 2004, 61) as to the power of each party. Pitman (2004) also noted the fundamental relationship between commissioner and minister was central to governance in all police agencies across Australia. Importantly, the model of governance is impacted by the concept of *office of constable* and the British legal position<sup>13</sup> on this has been widely debated in Australia. Fundamentally, ministers cannot involve themselves in operational matters. Both Pitman and Fleming discussed this matter and concluded it was problematic for both commissioner and ministers to have a clear understanding of what is *operational*. This issue of governance and political interference has been tested publicly according to Pitman where “police commissioners have taken exception to ministerial directives and have generally come off second best” (2004, 115).

Another aspect of governance concerning police officers, from commissioner to constable, is under all acts they must swear an Oath of Loyalty. The taking of the Oath is requisite to a police officer lawfully exercising police powers provided under both statute and common law. The impact on governance of taking the Oath was explained by the Chief Justice of Tasmania in 2005 (Underwood 2005) and is summarised as follows: police officers in Tasmania were servants of the Crown and the exercise of their powers was independent as held by

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<sup>13</sup> R v Commissioner of Police of the Metropolis, ex p. Blackburn [1968] 2 QB 118: Lord Denning’s comments: “The office of constable exercises powers directly from the law and not indirectly delegated from the minister” (Pitman 2004, 123)

the High Court of Australia in the *Enever* case of 1906.<sup>14</sup> Technically and legally all Australian jurisdictions consider their officers (constables at law) to be independent of government and this position has not been challenged to date some 108 years after the *Enever* case was decided by the High Court.

In respect to governance of police, the *Enever* case *inter alia* established the nexus to English common law in this area and the principle of independence as it relates to governance. Governance provisions for police agencies ostensibly put them at an arms-length from government—although as noted this is debatable and recent research on the topic by Fleming and Pitman clearly demonstrated the blurred and ambiguous nature of police independence. This view is supported in this thesis as it will be shown that the ministers (government's) power pertaining to funding, legislation and policy impinges directly on the notion of independence for the police. The reality is police must enforce the law made by government; can only undertake functions for which they have sufficient funding; and must comply with government policy in respect to how an agency operates. As a consequence of the two competing dynamics, *operational independence* versus the pragmatic reality of government forms of control (legislation, funding and policy), the general position of police agencies and officers in Australia means they operate with greater independence than other government agencies. However, at the end of the day they are accountable to the government either explicitly or tacitly.

It should also be noted Australian agencies differ significantly in this area from police agencies in most other western nations. Chapter Six concerns the comparison of Australian policing with a number of other nations and discusses governance in this context. It is suffice to say most of these nations have governance arrangements providing community input through independent boards, commissions, committees or councils with full or limited governance responsibilities. Clearly the Australian approach to governance is different and excludes accountability to the community where an agency operates.

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<sup>14</sup> *Enever v R* (1906) HCA 3; (1906) 3 CLR 969 (12 March 1906).

### 2.8.3 Jurisdiction

The final organisational dimension concerns *jurisdiction*. It is an abstract concept derived from the respective constitutions and concomitant legislation. The propositions put forward concerning jurisdiction in this section simply relies upon the interpretation and understanding of the current powers of the respective levels of government in the federation, for which police legislation is a product of the respective parliaments. The theoretical basis for jurisdiction of the laws, as it pertains to the federal partners is discussed in general by Carney (2006) and Ratnapala and Crowe (2012) and the opinion that follows on police jurisdiction relies upon these fundamental tenets surrounding the question of jurisdiction.

This issue of jurisdiction provides a well-used technical defence in judicial proceedings as police agencies and officers are only permitted to operate within geopolitical borders and undertake functions permitted by law. It should be noted at this point the traditional concept of operating within geographic borders is problematic as the development of cybercrime and other crimes played out in cyberspace challenges conventional definitions and concepts of jurisdiction.

Generally, policing activity is restricted to jurisdictional boundaries of the respective agencies in Australia. For the six States this is straightforward and restricted to the State borders. For the territories the jurisdictional issues differ. To start with, the Northern Territory has its own police force and operates like a State agency within its borders. The Australian Capital Territory is policed by the AFP along with the eight other Commonwealth territories.<sup>15</sup>

The Commonwealth's jurisdiction is covered by the AFP, which can operate anywhere in Australia and outside Australia where functions involve international

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<sup>15</sup> The *Australian Federal Police Act 1979* (Cth) lists this as a function of the AFP and later in 1988, under section 23 (1) (c) of the *Australian Capital Territory Self Government Act 1988* (Cth) excluded the ACT Parliament's from having the power to make laws concerning: (c) *the provision by the AFP of police services in relation to the Territory*.

The AFP also has jurisdiction in other territories of: Ashmore and Cartier Islands, Australian Antarctic Territory, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay Territory, Norfolk Island, Territory of Heard Island and McDonald Islands

liaison, international investigations, peacekeeping or training, that are authorised by law. Additionally, since 2004 members of the AFP have been provided with the power to investigate *State offences that have a Commonwealth aspect*.<sup>16</sup> Primarily section 4AA was inserted into their Act with the intention to assist AFP officers investigating offences against the Commonwealth (Ellison 2004; Explanatory Memorandum 2004). This allows AFP officers to investigate both Commonwealth and State offences, a situation not reciprocated for State police who are restricted to State offences within their jurisdiction.

Common to all jurisdictions is the power of Commissioners provided under the respective police Act to make *special members* or *special constables*. These are generally police officers from other jurisdictions entering the adjoining State or Territory to undertake police duties. Along the borders of the States and Territories police officers from both sides of the border as a matter of practice are made *special constables* in order to prevent borders becoming barriers to maintaining law and order or providing protection for fleeing criminals.

The arrest and extradition of criminals between jurisdictions is facilitated by Commonwealth legislation, the *Service and Execution of Process Act 1992* (Cth) and the legislation makes it a relatively easy and straightforward process for State and Territory courts. Travelling to another jurisdiction and extraditing an offender does not require a police officer to be made a *special constable* in that jurisdiction to perform this type of police activity.

## 2.9 Function

*Function* complements the organisational dimensions for policing agencies and concerns the primary activity of police agencies—the scope and range of work undertaken by the personnel of an agency. It can also be expressed in terms of the responsibilities an agency has under its commission that may be detailed in the respective Act. This dimension is rudimentary as it establishes the boundaries for authorised activity that police agencies undertake in their respective jurisdictions.

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<sup>16</sup> *Australian Federal Police and Other Legislation Amendment Act 2004* (Cth).

The functions can differ between agencies and importantly in the context of the system of government, is directly related to the tier of government in which an agency is located.

What the police actually do is not generally found in a specific written form. Some jurisdictions include general statements in their legislation as to the functions of police (the Commonwealth, New South Wales, Northern Territory, Queensland and South Australia) while other jurisdictions (Tasmanian, Victorian and Western Australia) have little or no reference to functions. In the latter group of states the Acts provide indirectly for *functions* through the Commissioner's power to define the work of police officers through subordinate legislation:

- Tasmania—orders, directions, procedures and instructions
- Victoria—standing orders
- Western Australian—rules, orders and regulations

The actual functions undertaken by the eight Australian agencies are best investigated by reviewing the contents of Annual Reports. The functions undertaken all appear to be similar when these documents are considered. The relevant functions where detailed in the respective Acts are set out on a jurisdiction basis in Appendix C.

After considering the recent annual reports of the police agencies and the functions detailed in some of the Acts, along with the respective Commissioners' powers, the functions all appear to be consistent with the definition used for policing in this chapter.

In addition to the relatively common police functions delivered in each jurisdiction, the AFP provides these for the Australian Capital Territory and other territories, but also provides additional functions due to its national and international responsibilities (Baker 2004, 150–151). These functions have two main sources. Firstly, there are a number of specific functions derived from “the express incidental power in section 51 (xxxix) of the Constitution or in the implied incidental powers contained in the heads of power in sections 51 and 52 and in the executive power in section 61” (Parliament of Australia 2013). Examples of these

matters concern crimes involving: illicit drug importation, financial and banking related money-laundering, crimes concerning communications and the Internet and crimes against humanity. Many of these crimes are derived from the Commonwealth's *external affairs* and *communications* powers that afford responsibility for related police functions.

The second source concerns the unusual political development at the start of the new millennium, specifically in 2002 and 2003, when the States handed over responsibility respectively, to the Commonwealth government for criminal law involving *terrorism* and *organised crime*. These responsibilities previously resided with the States and they collectively used a formal constitutional procedure (applying section 51 (xxxvii) of the Constitution) to refer their criminal law powers in these areas to the Commonwealth Parliament.

There are also other functional responsibilities for Commonwealth policing under section 7 of the *Australian Federal Police Act 1979* (Cth), which provides for policing involving matters of an international nature, in addition to those matters concerning the investigation of criminal offences. There is a range of functions including facilitating information between police agencies and agencies outside Australia, providing international liaison officers, peace-keeping forces, training including capacity-building of police agencies in other nations, especially in the Asia-Pacific area. It performs many of these functions with the cooperation of staff from State and Territory police agencies.

## **2.10 The Legislative Framework of Australian Policing**

As shown from the previous section, the organisational and functional dimensions of Australian policing are derived from a legislative base and it is worth tabulating salient sections of the respective acts. The table is also a useful reference for the remaining chapters that refer to the legislative framework in a number of instances.



**Figure 2.3: Summary of Police Legislative Framework in Australian 2010**

	<b>Commonwealth</b>	<b>Australian Capital Territory</b>	<b>New South Wales</b>	<b>Northern Territory</b>	<b>Queensland</b>	<b>South Australia</b>	<b>Tasmania</b>	<b>Victoria</b>	<b>Western Australia</b>
<b>Police Act</b>	Australian Federal Police Act 1979 (Cth)	Australian Federal Police Act 1979 (Cth)	Police Act 1990 (NSW)	Police Administration Act 1978 (NT)	Police Service Administration Act 1990 (Qld)	Police Act 1998 (SA)	Police Service Act 2003 (Tas)	Police Regulation Act 1958 (Vic)	Police Act 1892 (WA)
<b>Statutory appointment of Commissioner and by whom</b>	Yes, (s.17) Governor-General by commission for 7 years	No, Chief Police Officer, appointed by AFP Commissioner	Yes, (s.24) Governor on recommendation of Minister	Yes, (s.7) Administrator by Commission	Yes, (s.4.2) Governor in Council with recommendation of Chair of Crime and Misconduct Commission	Yes, (s.12) Governor	Yes, (s.6) Governor for 5 years	Yes, (s.4) Governor in Council	Yes, (s.5) Governor
<b>Police Minister and title</b>	Minister for Home Affairs	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police, Fire & Emergency Services	Minister for Police, Corrective Services & Emergency Services	Minister for Police	Minister for Police & Emergency Management	Minister for Police & Emergency Services	Minister for Police; Emergency Services; Road Safety
<b>Minister can direct Commissioner</b>	Yes, (s.37)	No	Yes, (s.8.1)	No	Yes, (4.6)	Yes, (s.6 & s.8.)	Yes, (s.7)	No, except by Governor-in-Council (s.5)	No
<b>Act specifies Functions</b>	Yes, (s. 8)	See Commonwealth	Yes, (s. 6)	Yes, (s. 5)	Yes, (s. 2.3)	Yes, (s. 5)	No	No	No

## **CHAPTER THREE: AUSTRALIAN FEDERALISM**

### **3.1 Introduction**

This chapter explores Australian federalism and its influence on the development of Australian policing. The chapter begins by considering the design and evolution of Australian federalism and concentrates on the matter of increased centralisation and how this affected policing. Regarding the design of federalism, the two key factors of the constitution and division of powers are explained in the context of Australia and the operation of government. This is followed by examining the evolution of federalism and identifying the key instruments used by the Commonwealth to expand its role—enumerated powers, fiscal power and intergovernmental relations.

The chapter then drills deeper in the analysis of the development of federalism and seeks to identify how and why change occurred in recent times. This analysis of federalism refers to a range of literature in respect to descriptions and explanations of Australian federalism. Importantly, studying the range of opinions as to why Australian federalism changed and the mechanisms responsible provides important insight for the later chapters that investigate the role of federalism in policing.

Two cases studies are then used in the chapter to illustrate the mechanisms that the Commonwealth used to increase centralisation. Importantly for policing, these two areas, education and health, share the same antecedents and were solely State responsibilities at Federation yet now exhibit a high degree of concurrency. The point of the cases studies is for use in later chapters in order to determine whether the way in which centralisation has been pursued in policing is similar or not to these other areas of State service delivery.

The chapter concludes by considering centralisation as a key characteristic of contemporary Australian federalism.

### **3.2 Australian Federalism**

Preston King (1982, 21) defines *federalism* in the following terms.

Federalism, most distinctively, constitutes a variable response to opposed demands for the dispersal and concentration of power. More precisely, federalism constitutes a variable response to opposed demands for the centralization and decentralization of power on a specifically territorial basis.

Conceptualisation hinges on the relationship between the national and sub-national tiers of government in terms of which tier has the most power. Generally this power relationship relies on the founding constitution that sets out and articulates the fundamental elements of the relationship between the respective tiers of government i.e. the powers each level is responsible for, along with a range of technical and structural issues. Succinctly put, the power relationship and the extent of centralisation is the key issue for governments with the starting point being the nation's constitution.

Much has changed in the world since many of the main federal constitutions were first ratified. In most cases have not kept up with modern society. These aging constitutions never envisaged the natural and man-made events affecting governments of the present and this is the case for the Australian Constitution that is over a century old. So how has Australian federalism coped with these changes? To begin with the design of Australian federalism has to be considered in terms of its structure and the central issue of the division of power. Once these two aspects are examined the evolution of federalism and the key mechanisms that have been applied to develop the current arrangements between governments are investigated.

### **3.3 Australian Federalism: Design**

The design of Australian federalism can be ascertained from the constitutional structure and the division of powers between the two tiers of government—Commonwealth and State. These two aspects of federalism are considered separately.

### 3.3.1 Constitutional Construction

The starting point for Australian federalism was the agreement between the six Australian colonies in the 1890s to establish the Commonwealth of Australia. The nation came into being with the passing of the *Commonwealth of Australia Constitution Act 1900* by the Imperial Parliament. The Constitution established the two tiers of government—the Commonwealth and the six sub-national State governments. The main features of the system of government at Federation included:

1. Strong bicameralism. The Commonwealth Parliament constituted by two houses of parliament—the House of Representatives (or lower house) elected from political sub-divisions of similar sizes; and a Senate (or upper house) constituted from an equal number of senators (six) elected from each of the six States.<sup>17</sup> This was the *house of review* originally seen as protecting *state's interests*. State parliaments were also bicameral and all but Queensland<sup>18</sup> have kept two houses.
2. Based on the *Westminster* system, the Prime Minister and government were selected from the lower house—the House of Representatives. This is the main house and it initiates money bills. There was no provision for a separate executive government to be elected i.e. a President, and the national political leadership was drawn from the Parliament and like Westminster and by convention (e.g. no mention in the Constitution on how the Prime Minister is selected), this leadership was drawn from the lower house. State systems mirrored this structure.
3. The division of powers between the Commonwealth and States were influenced by the US system with the national government being “assigned powers” (Fenna 2008, 510) while the State’s powers “were left plenary and untouched” (Fenna 2008, 510). The view was that a decentralised system of federalism existed at the time of Federation. “Australian federalism was created on the presumption that the national government could be

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<sup>17</sup> Currently there are twelve senators from each State and two from the ACT and NT.

<sup>18</sup> Queensland Legislative Council abolished by the *Constitution Amendment Act 1921* (QLD), which took effect on 23 March 1922.

restricted to responsibilities of a specific *national* character. Almost the full range of internal domestic responsibilities previously exercised by the constituent units would continue to be controlled at the sub-national level” (Fenna 2007b, 304).

4. There was a prescribed process included in the Constitution for its amendment that required a national referendum. Referendums have had a history of failure due to rejection by the electorate and since 1906 there have been a total of 44 referendum questions put to the electorate, with only eight being successful. Some commentators are of the view that the low success rate of referendums to change the Constitution reflects the electorate’s reluctance to increase the powers of the Commonwealth (Twomey 2008, 61–62; Hollander and Patapan 2007, 290; Wiltshire 2008b, 588).
5. Provision was made for a court to adjudicate constitutional disputes between governments (the High Court of Australia). The decisions of the High Court have been influential since Federation. Between 1901 and 1920, the Australian federation was viewed as being decentralised until the High Court brought down its decision in the Engineers case (1920).<sup>19</sup> With the Engineers case in 1920 there was a distinctive shift in the High Court’s interpretation of the enumerated powers (e.g. external affairs and corporations power of the Commonwealth)—from a narrow to a broad interpretation favouring the Commonwealth. Following on from Engineers, the Commonwealth expanded its powers as the High Court continued to interpret the enumerated powers sections of the Constitution favourably to the Commonwealth (Fenna 2007b, 298–299; Wiltshire 2008, 587–589).

### **3.3.2 The Division of Powers**

The form of the Constitution was similar to the US and Canada as it took a legislative approach (Fenna 2007b, 303). The powers of government were divided

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<sup>19</sup> *The Amalgamated Society of Engineers Claimant; and the Adelaide Steamship Company Limited and Others Respondents* (1942) 28 CLR 129.

by assigning full responsibility for specific policy areas to one level of government or another (though sometimes with some overlap or *concurrency*).

The key challenge for federal systems is the way the division of powers generates a relentless competition between the levels of government. The decisive characteristic of any federation is the power relationship between the tiers of government and this is the case in Australia that sets the Commonwealth against the six States. Australia has a history since Federation of disputes between the partners and the occurrence of disputes “over jurisdiction have been ever present” (Hollander and Patapan 2007, 280). This is fundamentally concerned with the division of power that has become a fact of political life played out in the theatre of Commonwealth-State relations.

The initial structure of Australian federalism was characterised by the Commonwealth exercising the powers and responsibilities seen as “imperatives for federation—defence, uniformity of economic policy, freedom of interstate trade, and uniformity in immigration policy” (Majeed 2006, 10). Federation began with the establishment of a number of Commonwealth agencies or arrangements with States to administer and enforce legislation and policy. One such arrangement was for the State police to provide the Commonwealth’s policing needs.

Under section 107, the States were allocated sole responsibility for all matters not enumerated in the Constitution as the responsibility of the Commonwealth. Thus, in areas like education, health and policing, the colonial arrangements for these services transferred seamlessly to the newly established State governments after Federation. The Constitution enumerated the powers of the national government in section 51—thus powers not identified in section 51 are implicitly the exclusive responsibility of the State governments. This appeared to provide clear boundaries for jurisdiction between the respective governments and was intended to limit the intrusion of the Commonwealth into the perceived responsibilities of the States. However, this has not been the case and the Commonwealth has entered areas of responsibility that at Federation appeared to be unequivocally reserved for the States. These intrusions have been an ongoing source of tension between governments and have increased since the mid-1970s.

On the other hand the Constitution also makes provision for the States to transfer powers to the Commonwealth Parliament. Under the reference power provided in the Constitution at section 51 (xxxvii), a State or group of States can formally *refer* an existing power for which they have responsibility to the Commonwealth Parliament. This power “must fall within the legislative power of the State to make laws for the peace, welfare and good government of their State” (Carney 2006a, 14). An example occurred in 2002 when the State governments referred criminal law powers concerning terrorism<sup>20</sup> (criminal law is predominantly a State responsibility) to the Commonwealth Parliament. This was not a commonly used mechanism before the new millennium but has been increasingly used because of increasing pressure for the States to cooperate with the Commonwealth government (Carney 2006a; Lynch 2012). The benefit of this approach is the process is relatively fast and cost-effective because it is a simple legislative process in the respective parliaments.

Thus, there are several means to change the division of powers and the importance of this is fundamental as each time change is affected, it changes federalism and how it actually operates in practice, as opposed to the original model.

### **3.4 Australian Federalism: Evolution**

Australian federalism is no longer (if it ever really was) a system characterised by each level of government taking individual responsibilities and providing specific services based on clearly articulated responsibilities. Many responsibilities are in theory the sole responsibility of the respective government—border protection, defence and foreign affairs for the Commonwealth, education, health and policing for the States. However, since the 1970s the Commonwealth has increasingly intruded into many traditional State responsibilities and has developed a record of involvement regardless of obvious constitutional limits. Service delivery areas such

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<sup>20</sup>*Terrorism (Commonwealth Powers) Act 2002* (NSW); *Terrorism (Commonwealth Powers) Act 2002* (Qld); *Terrorism (Commonwealth Powers) Act 2002* (SA); *Terrorism (Commonwealth Powers) Act 2002* (Tas); *Terrorism (Commonwealth Powers) Act 2003* (Vic); *Terrorism (Commonwealth Powers) Act 2002* (WA).

as schools, national parks, hospitals, railways and national highways have all attracted Commonwealth interest and Commonwealth involvement. This has been achieved by a range of mechanisms, with the most common being by the use of Commonwealth fiscal power (Fenna 2008, Painter 2001, Wiltshire 2008a). This has resulted in the situation where the Commonwealth is involved in areas of public services regardless of the apparent absence of constitutional powers and formal responsibilities.

Since the 1970s the structure of Australian government and the way it operates has changed as individual self-sufficient State and Territory departments and authorities can no longer operate efficiently or effectively without a degree of cooperation with national and in some instances international counterparts. Borders are now more porous both physically and virtually as is the case with communications and cyber-networks. The population has become highly mobile with transport and communication networks providing real and virtual facilities to travel and do business. This change in the political environment was reflected in the changed structure of government that developed arrangements and institutions for cooperating and sharing responsibilities. Ratification of international treaties and agreements by the Commonwealth proliferated in the 1970s and thereafter (Carroll 2006) so government agencies in an array of areas have had to change to deal with international issues and problems related to the business of government.

The 1990s saw changes to the operation of government characterised by significant increases in intergovernmental cooperation and agencies. As Painter pointed out: "The result is an evolving system of multi-level governance, with system properties that threaten in the end to subsume the originating constitutional principles" (Painter 2001, 139). The major characteristic of this development in Commonwealth-State relations has been greater concurrence and "Governments must surrender autonomy, parliaments must compromise their sovereignty" (Painter 2001, 139). This evolution in government relations led in 1992 to the traditional meeting of Commonwealth and sub-national leaders (the Premiers' Conference) developing into the Council of Australian Government (COAG). This resulted in the formation of a range of interdepartmental committees



and agreements that changed many important aspects of the business of government. Cooperation between Commonwealth and State departments has been the mechanism used in many areas to achieve policy goals and deliver services to the mutual agreement of both levels of government (Menzies 2012, Twomey 2009).

Statutory authorities such as police and other emergency services are part of this structure, with policing being one of the oldest and most sophisticated groups to operate across borders in a cooperative manner. Currently, this way of doing government business is described as *harmonisation* in Commonwealth circles and simply translates to the Commonwealth being highly influential and even setting policy goals in some State government areas. Regardless, the Commonwealth intent supported by its fiscal influence and in some cases sheer determination and lack of State government fortitude to resist Commonwealth overtures, allows the national government to play an ever increasing role in areas traditionally the sole responsibility of the States (Selway 2001, 120; Jones 2008, 171). Change has taken place in the division of powers (the Commonwealth increasing) and the mechanisms used for this provide an insight to the transformation in Australian federalism.

Fundamentally three mechanisms have been used to alter the division of powers and relationship between the federal partners and these are considered individually in order to also provide an understanding of how Australian federalism has evolved.

#### **3.4.1 Commonwealth Enumerated Powers**

The enumerated powers provided at section 51 of the Constitution have been critical instruments in centralising Commonwealth power. The broad powers of communications 51 (v), corporations 51 (xx), external affairs 51 (xxix), immigration 51 (xxvii) along with narrow references to *sickness and hospital benefits* and *benefits to students* 51 (xxiiiA) are examples of enumerated powers used as instruments to centralise power.

In the case of external affairs, the proliferation of international treaties and agreements in the second half of the twentieth century “facilitated the exercise of the external affairs power to regulate matters within traditional State areas” (Carney 2006a, 10). The influence of international matters on public policy and the division of power in the federation has expanded the Commonwealth’s role exponentially in daily life. This expansion saw the application of international agreements and treaties into government policy and law, resulting in the expansion of Commonwealth powers, which in a number of cases has lessened the powers of the States (Carroll 2006; Painter 2001; Wiltshire 2008a; Wiltshire 2008b; Hollander and Patapan 2007).

Ratnapala and Crowe (2012) put forward a view based upon one succinctly put by Chief Justice Gibbs in the *Tasmanian Dam Case*<sup>21</sup> concerning the influence of the enumerated powers on federalism: “there is almost no aspect of life which under modern conditions may not be the subject of an international agreement, and therefore the possible subject of Commonwealth legislative power” (Ratnapala and Crowe 2012, 374). Perhaps the best means of exemplifying the impact of the external affairs power is to consider the State’s sole responsibility to provide criminal law in their jurisdiction and a matter concerning the State of Tasmania. In this matter the Commonwealth used its external affairs powers to override Tasmanian laws that made homosexual acts a criminal offence. The Commonwealth position was that the existing Tasmanian legislation was in contravention of the *International Covenant on Civil and Political Rights (ICCPR)*, which Australia ratified in 1980. Subsequently, the Commonwealth Parliament enacted the *Human Rights (Sexual Conduct) Act 1994 (Cth)*, which contradicted the Tasmanian law. Tasmania had no recourse and its homosexual laws became invalid on constitutional grounds because the Constitution at section 109 provides precedence for Commonwealth laws when they are inconsistent with State law.

There are many other related matters where the external affairs powers have been used to achieve centralised outcomes in areas particularly relevant to

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<sup>21</sup> (1983) 158 CLR 1

policing. These include agreements and treaties concerning illicit drugs; licit drug trials; trafficking illicit drugs; selling chemical precursors; sex crimes; organised crime; money laundering; and terrorism. Many of these areas of public policy and law that were once reserved for the States now belong to the Commonwealth or operate concurrently. In some criminal law areas a number of States have declined to pass concurrent legislation and this has further legitimised the scope of Commonwealth law enforcement. An example of some States opting not to provide concurrent laws is found in the case of the Commonwealth anti-terrorism legislation that followed shortly after the 9/11 attacks. In this case New South Wales<sup>22</sup> and Victoria<sup>23</sup> were the only jurisdictions to pass concurrent legislation. Similarly in other areas of criminal law such as cybercrime and organised crime, some States have opted not to match Commonwealth legislation. Other enumerated powers such as postal and communications, banking and finance and immigration have provided major inroads for the Commonwealth because they used these powers to expand the Commonwealth's criminal law.

Another well-known example of the use of enumerated powers was the Commonwealth use of section 51(xxxiiiA), which was the product of the 1946 *Social Services Referendum*. Interestingly most of the powers lay dormant until 1972, when the Whitlam Government used several of the provisions as instruments to centralise powers in the areas of health and education. The *sickness and hospital benefits* provision was used to establish the national health system Medicare and *benefits to students* facilitated free university tuition. Both reforms went to the heart of State responsibilities and powers.

### **3.4.2 Fiscal Power**

One of the chief architects of the Constitution and first Chief Justice of the High Court, Sir Samuel Griffith, envisaged the States exercising wide-ranging powers and enjoying financial independence, free of interference or control by the Commonwealth. He considered the States should have the fiscal powers to enable them to be self-sufficient and not rely on the Commonwealth (Zines 1986, 77). To a

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<sup>22</sup> *Terrorism (Police Powers) Act 2002* (NSW)

<sup>23</sup> *Terrorism (Community Protection) Act 2003* (Vic)

degree, this position of the States collecting and spending revenue to satisfy their needs was the way governments operated in the federation until the Second World War. However, in 1942 the Commonwealth established a uniform national income tax scheme and removed income tax powers from the States. The result has been that the Commonwealth collects far more revenue than it needs—82 per cent of the nation's total tax revenue is raised by the Commonwealth (Twomey 2008, 65)—and thus the States are beholden to it for sufficient revenue to operate services.

According to the 2009–10 Commonwealth Budget, 49.2 per cent of State revenue will be provided by the Commonwealth “in the form of general revenue assistance and payments for specific purposes” (Australian Government 2009, 2). Fundamentally, “the States have a limited capacity to raise their own revenue. They are constitutionally barred from imposing excises, they were effectively deprived of their income taxes in 1942, and their tax-base was further narrowed in 1999 by Commonwealth requirements imposed as part of the implementation of the goods and services tax ('GST')” (Twomey 2008, 65). Commonwealth funding from a power sharing and policy making perspective has a substantial influence on State governments.

The Commonwealth currently provides financial support for the States' service delivery efforts through *National Specific Purpose Payments* (National SPPs) to be spent in key service delivery sectors. They also provide three types of *National Partnership Payments*—project payments, facilitation payments and reward payments. Also they provide *General Revenue Assistance*, consisting of GST payments to be used by the State for any purpose, and other general revenue assistance. The ability to provide conditional funding to the States through tied grants has been instrumental in increasing the power and influence of the Commonwealth. This power to make grants on such terms and conditions as it sees fit has been challenged by the States unsuccessfully in several notable cases with

the Commonwealth's right to making funding conditional under section 96 upheld by the High Court (Ratnapala and Crowe 2012, 356).<sup>24</sup>

From a policy making perspective, the fact of Vertical Fiscal Imbalance (VFI)—where Commonwealth revenue exceeds requirements while States' revenues are incapable of matching expenditure—provides the Commonwealth with broad persuasive power to influence and direct public policy, as by necessity States rely on Commonwealth funding. One result of the use of conditional grants has been “the legislative limits on the Commonwealth have not prevented it from playing a significant role in the formation of policy outcomes in areas historically seen within the province of the States. Section 96 is the basis of this power” (Majeed 2006, 18).

### ***3.4.3 Concurrency (de facto) and Intergovernmental Relations***

The Commonwealth, however, has not moved to its present position by applying only its enumerated and fiscal powers. Another important mechanism providing it with increased power has been the negotiation power of the Commonwealth, outside of the formal constitutional mechanisms. This has resulted in the development of a system of intergovernmental committees, councils and meetings as the means of facilitating business between the tiers of government. The significance of intergovernmental relations cannot be underscored as it plays an increasingly important role in how federalism operates.

Where the Commonwealth fails to achieve its objectives by constitutional means it has the option to use sub-constitutional processes and mechanisms to achieve its objectives. Sub-constitutional mechanisms have been used by successive Commonwealth governments over the years to change the balance of power by the application of mechanisms facilitated by negotiation and cooperation. Negotiated settlements come about when the respective governments “reach an agreement as to which government would be responsible for which fields of public policy and expenditure, with a commitment not to legislate or act within a field that

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<sup>24</sup> The notable cases referred to by Ratnapala and Crowe included — *Second Uniform Tax Case*: (1957) 99 CLR 575; *Federal Aid Roads Act 1926* (Cth): *Victoria v Commonwealth* (1926) CLR 399; and *State Aid Case: Attorney-General (Vic) v Commonwealth* (1981) 146 CLR 559.

fell to the responsibility of another government, then a reallocation of responsibilities could be achieved without any formal constitutional amendments with respect to powers” (Twomey, 2008 63).

In this vein, the Commonwealth has developed a range of formal bodies to negotiate matters between the members of the federation. *Multi-level governance* (Painter 2001) or *executive federalism* (Wiltshire 2008a; Wiltshire 2008b; Twomey 2008; Hollander and Patapan 2007) or *intergovernmental relations* (Wanna *et al* 2009) is a development involving ministerial councils and devolved bodies and institutions. It is characterised by decision and policy making operating outside the constitutional processes and institutions, most particularly parliament and executive government. This form of arrangement, labelled as undemocratic by some commentators (Wiltshire 2008a), has been used to change the balance of power and has been a means applied most effectively, to the benefit of the Commonwealth in order to achieve its goals.

Mechanisms involving intergovernmental relationships have become increasingly complex and sophisticated and now are enshrined in the form of a bureaucracy operating under the badge of the Council of Australian Governments (COAG) since 1992. Under the auspices of these meetings of Commonwealth, State and Territory first ministers, a hierarchy of ministerial councils, administrative forums, committees and agencies provide an administration operating alongside the traditional machinery of government.

### **3.5. Perspectives on Australian Federalism**

The shift to a system with a much expanded Commonwealth role and, as a result, extensive *de facto* concurrency, has generated a variety of analyses and critiques revolving around concepts ranging from ‘cooperative federalism’ to ‘opportunistic federalism’.

Cooperative practices have been most thoroughly investigated in Martin Painter’s 1998 book—*Collaborative Federalism: economic reform in Australia in the 1990s*. Painter’s main argument was that the quest for economic reform and not

federalism reform drove the development of the much closer working relationship between the Commonwealth and the States known as *cooperative federalism*. While this much more 'integrated' model is described as 'cooperative' and features a number of *collaborative* institutions and arrangements, Painter (1998, 32) emphasises that it remained nonetheless 'adversarial'. The imperative to work together cannot change the fact that the Commonwealth and States have "competing images of cooperative federalism: the Commonwealth had in mind a centrally managed, collaborative model, and the states mostly had in mind moving towards an arms-length, balanced relationship of mutual respect, and were attracted to a model of competitive federalism" (Painter 1998, 12). This form of federalism has advanced centralisation as the Commonwealth is a single unified body while the States have difficulty acting as a unified bloc. The fiscal power of the Commonwealth will always be a dampener to State sovereignty and individuality.

In a later work, Painter (2001, 149) argued that "the Australian federation will evolve as a system of multi-level governance in a way that undermines the constitutional forms on which its constituent units, and the union itself, were based". The Commonwealth uses sub-constitutional mechanisms and institutions to increase centralisation. Painter's view can be summarised as *cooperative federalism* has been mainly responsible for change to the balance of powers.

Following on from this view of cooperative federalism has been the detailed case study by Stephen Jones (2008) that argues the Commonwealth has used the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) to achieve its policy goals in those areas. The fact of its fiscal power and the single Commonwealth entity *vis-à-vis* the diverse State and Territory entities, has facilitated its preeminent role in this policy making domain. The Commonwealth has been able to use "its fiscal and constitutional superiority to implement its own agenda" (Jones 2008, 7).

Another view on cooperative federalism by Cliff Walsh (2008) considered the relationship between governments and their agencies in economic and political terms. The *cooperative* approach facilitated by sub-constitutional mechanisms is

“sometimes highly desirable and productive [but], is not invariably ‘a good thing’ from the perspective of applying democratic principles” (Walsh 2008, 566). He also observed that generally only changes that benefited the Commonwealth got traction and were successfully implemented. Many of these changes were due to the fact of spillovers (Walsh 2008, 579–580) or achieving economies of scale (Walsh 2008, 570-571) for which the Commonwealth was the natural responder and willingly took on additional responsibilities.

The emergence of a highly integrated and centrally-led federalism in Australia has also led some authors to focus on the need to adapt to those realities. Selway (2001), for instance, has argued that the States need to reform their institutions so they can effectively work with the Commonwealth in order to ensure prosperity across the whole of the federation. The key to reform is for the States to understand their primary role is service delivery, not policy making, and under the new cooperative model this is their assigned role. This is because “the Commonwealth has become the pre-eminent source of policy on any issue that it chooses; the states have primarily become the providers of services which are funded by the Commonwealth and where the Commonwealth determines broad standards of quality” (Selway 2001, 120).

Similarly, Menzies (2012) recognised that regardless of this type of federalism having many critics—who see it as an undemocratic means for government to function in Australia—cooperation is the way forward. This approach allows “intergovernmental decision-making within the context of the global economy” (Menzies 2012, 2). Executive federalism provides political leaders with the pragmatic means for fixing issues—problem-solving for current political issues. The expansion of COAG—the peak intergovernmental instrument, is beneficial to political leaders by providing more expedient and effective problem solving instruments, generally not available in such a timely manner through parliaments and the constitutional decision-making structure. Executive federalism diminishes the role of constitutional and political institutions but improves the effectiveness of government.



The concept of *pragmatic federalism* can be seen as representing the culmination of this line of interpretation. According to Robyn Hollander and Haig Patapan (2007, 281), changes to Australian federalism (in the period from Hawke to the Howard Governments) are best characterised as ‘pragmatic’: “a direct engagement or confrontation with pressing problems, an engagement unmediated by larger theoretical concerns”. Supported by the High Court, this approach has favoured the Commonwealth at the expense of the States and centralisation has increased. Compelling problems provided a window of opportunity for the Commonwealth to deal with them and this simply expanded the scope and range of federal powers. Consistently, the Commonwealth has been prepared to intrude into sub-national governments matters concerned with new and emerging problems. Cases studies cited by Hollander and Patapan to support their hypothesis include the establishment and development of COAG; National Competition Policy (NCP); national gun control following the Port Arthur massacre; and the introduction of the Goods and Services Tax (GST).

The alternative view to these analyses emphasising cooperation and pragmatism is to see a much more *coercive* aspect to the centralising trends in Australian federalism and a much more opportunistic use of Commonwealth power. From this perspective, intergovernmental relations are more adversarial and the Commonwealth more coercive in its use of fiscal and constitutional power over the States.

*Creeping centralisation* is an alternative description of the *opportunistic/coercive* approach characterised by the Commonwealth increasing its powers and government becoming more centralised in Australia. This evaluation concludes that the current system fosters “creeping centralism (that) is dysfunctional” (Twomey 2008, 57) and the Commonwealth obviously is benefiting from this, while States’ powers are diminishing. Overall, heading in this direction is considered detrimental to the nation. Fundamentally, the observation made about the evolving system of federalism is that the Commonwealth is both *opportunistic* and *coercive* and this increases its powers.

Similarly, Hollander and Patapan's idea that centralisation is best understood as representing a relatively benign process of pragmatic adjustment whose direction has been determined by judicial decision-making has been contested by Alan Fenna (2012b). Fenna argues that while in some areas the process has indeed been a relatively uncontentious one, pragmatic adjustment has not been the case across the board. In many areas the Commonwealth has engaged in a policy expansionism that has been resisted or resented by the States and while the High Court has indeed facilitated centralisation, it has not been the driving force. Underlying much of the centralisation, Fenna (2007a) argues, are a range of economic and social changes that have given a national dimension to problems that were previously only local. In some instances this has given rise to pragmatic adjustment, but in others a more programmatic and sometimes 'opportunistic' (Fenna 2007b, 305) centralisation has been evident.

If Hollander and Patapan are correct, we ought to see evidence in policing of the same dynamics at work as in other policy areas as well as an important role for the High Court in directing change in a centralising way. If, alternatively, Fenna is correct, we ought to see evidence of consensual, pragmatic, adjustment in some areas but not in others and the High Court playing a secondary role. If the pattern does vary across policy areas as Fenna suggests, we need then to understand why.

### **3.6 Drivers of Change to Federalism**

Given that there are competing views on how federalism has manifested itself and changed government operations and structures, at this stage before considering specific areas of government, it is worth taking a step back to consider the drivers of change to federalism.

Primarily, it appears new and emerging problems or focussing events have required governments to develop solutions to the problems or respond to the events. As they emerge or come to the surface, governments are being increasingly expected to take the role of problem-solver and provide solutions. The past thirty years has seen for example the advent of globalisation and all of the associated

issues emanating from this phenomenon. Generally, this has required national governments to take up the primary response role for addressing direct international problems and interrelated State challenges. This is because they are seen to have the infrastructure, jurisdiction and resources to respond in an effective and timely manner.

In Australia this approach to problem-solving has occurred in many areas of government activity, policing being a good example. Many of the problems emanating from outside Australia have affected the community at both a national and state level and have in the case of some crime matters driven the involvement of the Commonwealth government in policing.

The evidence to support the proposition that the *problem solving* role of government is a key driver of the centripetal trend and changed federalism can be found in some of the literature discussed previously. Hollander and Patapan and their *pragmatic federalism* argument explains the centralist trend as being the result of problem identification, requiring immediate solutions and action through sub-constitutional processes and institutions to solve the problem under the auspices of *cooperative federalism*. Their argument appears to fit well in areas of service provision where traditionally State governments are responsible, but now have difficulty providing the resources to do the job properly. They provide the case study of Gun Control after the Port Arthur Massacre and three other cases,<sup>25</sup> to explain what was driving Commonwealth intervention in State matters. These cases revolve around new problems and focusing events<sup>26</sup> (Birkland 1998) that have national implications for which the Commonwealth wanted to become involved—and critically had the capability to provide solutions. The States, in all of the matters, agreed to Commonwealth involvement and solutions, in some cases with some reluctance, as in the case of uniform national gun laws (Hollander and Patapan 2007, 285–288).

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<sup>25</sup> In the section “Politics, Problems and Patterns” (pp. 285–288) there are four cases considered by Hollander and Patapan—Keating’s COAG; National Competition Policy; Gun Control; and GST.

<sup>26</sup> A focusing event is defined as “an event that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing the possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and that is known to policy makers and public simultaneously” (Birkland 1998, 54).

Menzies supports this approach of *fixing* issues (Menzies 2012, 2; Hollander and Patapan 2007, 290) in a timely manner through sub-constitutional means like the use of COAG as being “in the national interest” (Menzies 2012, 2). The conclusion that is drawn from consideration of these arguments is the Commonwealth is best positioned and is willing to help the States out, for it has the resources and desire to expand its powers in the national interest.

Finally, when considering drivers of change and federalism, the fact of the Commonwealth’s opportunistic/coercive approach in many traditional areas of State government should be considered. Over the past thirty years there have been a number of blunt intrusions into State affairs where the Commonwealth has come out on top. In the areas of the environment with the Tasmanian Dam case,<sup>27</sup> Tasmania’s homosexual criminal laws<sup>28</sup> and vocational training and tertiary education,<sup>29</sup> the power of the Commonwealth has been exhibited. Jones’ study of a ministerial council (Jones 2008) provides evidence of the Commonwealth’s agents in action; they are subtle but coercive, and the Commonwealth generally gets its way in the respective policy.

### 3.7 Changing Federalism

There are clearly a range of views concerning the change to Australian federalism and they are generally descriptive and focus on how change occurred in recent times. There are also explanatory opinions that focus on why change occurred and the relevant drivers. The conclusion drawn from the discussion is that federalism is changing and there are competing views on how and why it occurred.

In the following chapters the question of how and why change occurred in policing are tested against the experiences and events since 1970. However, it

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<sup>27</sup> The High Court successfully upheld the Commonwealth’s challenge to the state of Tasmania building a dam on the Franklin River on the grounds that its External Affairs powers i.e. it has entered international treaties concerning the protection of the environment, allowed it to override State legislation to build the dam—*Commonwealth v Tasmania* (1983) 158 CLR 1.

<sup>28</sup> The Commonwealth passed the *Human Rights (Sexual Conduct) Act 1994* (Cth) to override Tasmania’s criminal laws in this area.

<sup>29</sup> Since the Whitlam era successive governments of both political persuasions have undertaken a concerted campaign to control these traditional areas of State responsibility. Basically, Commonwealth control has been achieved.

appears obvious at this stage that in respect to the changes in many areas of government, the operation of federalism has played a major role. It has been identified that much of this changed approach to federalism is driven by governments continually having to deal with and resolve new and emerging problems affecting their communities and stakeholders. This appears to have led in many instances to the need for national action for which the Commonwealth government is the preferred respondent *vis-à-vis* State government.

This new federalism does on the face of it lead to increased centralisation for services like policing as opposed to the traditional standalone delivery of services by the States. At this point it is appropriate to consider this practically and test the view on centralisation by examining the experience of two distinct areas of government service delivery, Education and Health. Nationally, these areas are the largest and most costly areas for government service delivery.

### **3.8 Federalism: Education and Health**

In these two main policy domains—education and health—a pattern can be identified that is in many ways typical of the centralisation that has occurred in Australian federalism.

The starting point with these areas of government begins at Federation where they, like policing, were exclusively State government services and since the 1970s have developed into concurrent areas of responsibility. This expansion in Commonwealth activity in these areas has been undertaken by using both constitutional and sub-constitutional mechanisms. An example of constitutional means has been the use of the equivocal references to health and education matters in section 51(xxiiA).<sup>30</sup> Regardless, the Commonwealth government possesses only slivers of explicit enumerated powers to base much of its activism in these two areas of State government responsibility.

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<sup>30</sup> A section inserted in the Constitution as a result of the 1946 'social services' referendum and reads in part—51. (xxiiiA) the provision of ...pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students....".

### **3.8.1 Education and Federalism**

The Commonwealth's involvement in education prior to the Whitlam government (1972–75) had been *ad hoc*, but from then on it has been concerted and significant. Post-Whitlam State education systems have been described as being subject to Commonwealth *systematisation* (Lingard 2000) with successive national governments applying policy inputs via the government's capability to provide conditional funding. Whitlam's foray into education "was to be the engine for achieving a more socially just Australia" (Lingard 2000, 26) and this approach began with the commissioning of the Karmel Report and the implementation of many of the recommendations. Successive governments, in particular Hawke then Keating took an active interest in education but were more pragmatic than the Whitlam government in the approach to issues and how they dealt with the States. The motivation for Commonwealth involvement under these governments was more strategic and concerned national economic policy rather than issues of social equality. Australia had to increase national productivity and international competitiveness (Hinz 2010) and the view of the Commonwealth was this could be achieved by improving the education systems of the States. Since the 1970s, Commonwealth involvement in education has been justified on the grounds of national interest, for education was considered to be strategically important for both social equality and later for economic prosperity. The economic imperative that began with the Hawke government also foreshadowed the division of education into three distinct subdivisions by policy makers: schools, universities and vocational education. Tactically, this made it easier for the Commonwealth to target individually the three sectors rather than one large area. Strategically, the incursions on an individual scale combined to make Commonwealth involvement for the whole area, significant.

The mechanisms for exerting Commonwealth influence have generally followed the conventional approach and applied constitutional instruments and also to a lesser degree sub-constitutional processes. The authority for many aspects of the constitutional approach can be traced to the 1946 referendum and the resulting section 51(xxiiiA) 'benefits to students' being added to the

enumerated powers. This added a specific power for the government that it has applied concurrently with the States. But it has been the fiscal power of the Commonwealth has been the main instrument to make inroads into education. The extent of Commonwealth funding for example is demonstrated by considering the 2009/10 Commonwealth budget that provided the States with \$21.1 billion in specific purpose funding (Australian Government 2009a). According to the ABS in the recent years 2007 to 2010, funding for education by the Commonwealth government increased substantially and represents a significant amount of funding (ABS 2010). The contributions to education are demonstrated by Figure 3.1.

**Figure 3.1: Total government education expenditure, by source of funds as a proportion of total expenditure, 2007–08 to 2009–11 (per cent)**

Government Level	2007–08	2008–09	2009–10
Commonwealth	34%	35%	50%
State and local government	66%	65%	50%

Other processes used by the Commonwealth included establishing a national ministerial council for education, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). The Council according to a study undertaken by Jones (2008) provided the Commonwealth with a forum that it has used to achieve its policy agenda. Among the findings of the study were that the council's agenda between 1994 and 2005 was dominated by the Commonwealth.<sup>31</sup> This clearly evidenced the Commonwealth's use of such a forum to achieve greater influence than the lesser governments.

More recently the Commonwealth has established reform programs for education, including a national curriculum and national standards (MySchool program) that have been forced upon State governments. These programs have been tied to Commonwealth funding and unequivocally demonstrates the federal government *modus operandi*.

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<sup>31</sup> Raising 42 per cent of issues followed by 19 per cent by NSW and 11 per cent and 10 per cent respectively by Queensland and Victoria.

It can be concluded the Commonwealth increased its influence in education and it has become more centralised. Primarily, the Commonwealth used fiscal means to achieve its current position. An important fact to note concerning the Commonwealth's involvement in education is it continues to be policy based without any operational capacity. It does not own or operate any institutions and employs no academics, administrators and teachers to staff the education systems of States and Territories but is responsible for significant change and reform.

There has been significant opposition to this centralisation and there has been widely reported conflict between the States and the Commonwealth on education issues. Commonwealth involvement in education continues to grow "despite protestations by many a State minister for education that schooling is a Constitutional responsibility of the States" (Lingard 2000, 31). Jones also offered an insight into opposition by the States to Commonwealth involvement into education policy, "a function that clearly belongs to the States" (Jones 2008, 171). Jones concluded that the Commonwealth deliberately made policies "designed to overcome State resistance" (Jones 2008, 170). Moodie's 2007 article (Moodie 2007) concerning *Vocational Education* also supported the proposition that conflict between the Commonwealth and States in the education sphere had been ongoing since the Whitlam era and continued on to the present. The case of the 1992 establishment of the Australian National Training Authority (ANTA) as a compromise after the failed Commonwealth attempt to take over the sector demonstrated the occasionally effective nature of State resistance. Further attempts by the Commonwealth are outlined by Moodie up to 2005, all that were resisted. The resistance to some of the recent *Gonski* education reforms by some States reinforces this and again shows that conflict between the federal partners in this area is a fact of life as the recent head line in an article on the topic shows: "The Federal Government has backed down on schools funding after a row with a majority of the states and territories" (Perth Now News 2013).

With education, centralisation was achieved predominantly by coercive fiscal means and the States have and continue to resist the Commonwealth's intrusions. It has not been a consensual or pragmatic process.



### **3.8.2 Health and Federalism**

The Australian health sector is the largest area of government expenditure in Australia and is dominated by State government operated health services, while there is also a significant private element to the sector. Primarily, the Commonwealth funds State health systems and in the 2009/10 budget allocated \$12.138b for specific purpose grants for health (Australian Government 2009). The funds go to governments to be spent on specific health programs subject to agreed outcome targets. According to research by the NSW Parliamentary Library Research Service in 2004/05 (Griffith 2006), 66.8 per cent of recurrent costs of those sub-national health services were derived from the Commonwealth. While according to the Australian Institute of Health and Welfare (AIHW), when the total health bill for the nation is tallied, and taking into account non-government sources, the Commonwealth contributed about 44 per cent annually between 2007 and 2010. The table below was derived from the AIHW 2010/11, Health Expenditure Australia report (AIHW 2012).

**Figure 3.2: Total sources of funding for health, by source of funds as a proportion of total expenditure, 2007/08 to 2009/11 (per cent)**

Year	Australian Government	State and Territories	Total	Health funds	Individuals	Other	Total
2007/08	43.2	25.5	68.7	7.6	16.8	6.9	31.3
2008/09	44.1	25.1	69.1	7.8	17.1	6	30.9
2009/10	43.7	26.3	69.9	7.5	17.5	5.0	30.1

This snapshot of health funding illustrates the critical role played by the Commonwealth government in keeping State and Territory health systems functioning. The role of the national government originally was insignificant as it was the responsibility of the States alone, the Commonwealth having only one health responsibility, quarantine. It should be noted many of the principal health service providers at Federation and well into the century were non-government and included churches, charities, entrepreneurs (mainly doctors) and friendly societies. In the second half of the twentieth century State governments increased their participation in the provision of public health services and hospitals. In the case of hospitals some States now totally control this area of health services and hospitals

both public and private, operate under government regulation and license, and rely heavily on the State receiving Commonwealth funding.

In the first half of the century after Federation a number of initiatives were undertaken by the Commonwealth to expand its role and influence in health areas. The first venture was in 1921 with the establishment of the Commonwealth Department of Health which apart from its enumerated quarantine power, became involved in State health matters by funding programs concerned with national disease outbreaks and ongoing problems like Hookworm, TB and venereal disease. The Commonwealth also used sub-constitutional processes to influence health policy and in 1926 established the Federal Health Council, constituted by the Commonwealth Director of Health and State department heads. This body developed into the peak national research body for health policy and after 1937 became known as the National Health and Medical Research Council (NHMRC). The Council later changed its role and is now an independent research agency funded by the Commonwealth.

The most recent developments occurred under the COAG reforms in the late 1990s when the health sector (along with other key areas) was included in the raft of ministerial councils that sit below the peak leaders' forum. The peak ministerial body is the Standing Council on Health (SCOH) that has the Australian Health Workforce Ministerial Council (AHWMC) and the Australian Health Ministers' Advisory Council (AHMAC) amongst the bodies reporting to it. Below these two councils is a network of committees and groups tasked in respect to individual aspects and issues of the health portfolio.

The treatment of the health sector like the other areas of State government activity contained in the COAG structure resulted in health being considered as a concurrent area of government responsibility, shared between the Commonwealth and State governments. In respect to constitutional processes, the 1946 amendments to the Constitution provided formal powers at section 51(xxiiiA) concerning health related matters of "The provision of ...pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription)". These powers have been used as an instrument to

expand the Commonwealth's role in health reforms of the 1970s, the most important being the establishment of the national health insurance system. It was the Whitlam reform government (1972–75) that made the most significant foray into the health sector, using the section 51 powers and fiscal power to fuel reform and increased centralisation. That culminated in the Hawke government's 1983 establishment of Medicare. Since then, regardless of the ideology of successive Commonwealth governments, they continue to provide the majority of funds for State health services.

The tension between the Commonwealth and sub-national governments over health issues is played out in the media on a regular basis and continues to be a topical political issue. State opposition to centralisation has been identified in the recent works of a number of researchers on health services and federalism. Philippon and Braithwaite described opposition by the States as political turbulence: "It is a logically plausible, but politically turbulent, possibility for the Commonwealth to assume much more responsibility for the whole health system" (Philippon and Braithwaite 2008, 182). France (2008, 687) described the Commonwealth's intrusions into health care as "a source of significant intergovernmental tension". A recent and typical example of disagreement between the respective governments was the Rudd hospital reforms. Proposed in 2010 and heralded by a speech at the National Press Club in which the Prime Minister clearly acknowledged the fact of State resistance to Commonwealth reforms in health: "If the states and territories do not sign up to fundamental reform, then my message is equally simple: we will take this reform plan to the people at the next election" (The Australian 2010).

The position of the States was reported immediately after and they in most cases went on the defensive and as reported on the News Weekly website on March 20:

Some states are showing strong early signs of resisting the PM's plan. The WA Liberal Government flatly rejected it. Said Premier Colin Barnett: "We will not tolerate a situation where, from Canberra, all the decisions relating to our hospitals and most of the healthcare decisions are made".

The NSW Government says it will not consider the plan until the recommendations of the Henry Tax Review—which was completed in December, but which Mr Rudd has been too afraid to release—are aired and debated. Premier Kristina Kenneally says a new carve-up of the GST should not be discussed until all parties understand where the national tax system is heading.

And Victoria, which most strongly resisted John Howard's Murray-Darling takeover, is opposed to a plan which is unlikely to provide any real benefits. Premier John Brumby, who prides himself on his economic management, is least likely to agree to a reduction in his slice of the GST pie.

Only the South Australian and Tasmanian premiers, both in the middle of tight election campaigns, were warm to the idea, but that co-operation may change the day after polling day (News Weekly 2010).

Health services are a critical political issue at all levels of government and polling continues to show it has high priority for the electorate.<sup>32</sup> Again as with education, the Commonwealth is not a service provider in its own right and owns no infrastructure or employs staff, apart from in the original quarantine area and the *Medicare* bureaucracy. Thus, in order for the Commonwealth to achieve its goals it relies on the States to implement its policies, rather than provide services in its own right.

The Commonwealth is the major source of funding for all public and State operated health systems (Bennett 2009; Deeble 1996; France 2008; Griffith 2006; Philippon 2008). The *quid pro quo* since the Whitlam era has been control or at least significant influence of the policy agenda in specific areas of the sector. Primarily the States allow this to happen because of the fact of VFI—they own the service responsibility but not the means to fund its operation.

### **3.8.3 Education, Health and Federalism**

When considering the federalism aspects of State operated areas of government service provision, there are a range of similarities in the means used by the

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<sup>32</sup> The ABC Vote Compass site showed voters rated Health the highest priority for service delivery areas for the 2013 election—available at <http://www.abc.net.au/news/2013-08-09/vote-compass-data-results-important-issues/4872896>

Recent Australian Financial Review survey showed Health and Hospitals to be the most important issue for government—21 March 2014 available from [http://www.afr.com/p/business/healthcare2-0/voters\\_mark\\_down\\_government\\_on\\_health\\_7oFqJjUNOnXAzXef233PbO](http://www.afr.com/p/business/healthcare2-0/voters_mark_down_government_on_health_7oFqJjUNOnXAzXef233PbO)

Commonwealth to engage and control many aspects of them, most importantly the policy agenda. Consequently, the areas are characterised by increased centralisation, especially after the Whitlam years.

The use of mechanisms such as fiscal power, enumerated powers and intergovernmental relations—have provided the Commonwealth with an effective means of influencing and in some instances controlling both these areas of service delivery. The Commonwealth has not become an operator in its own right of these services but critically has been able to use its power to gain and maintain effective control. The Commonwealth approach and *modus operandi* has been fundamentally the same in these two areas and its unrelenting pressure through funding and influencing policy making has been successful.

One feature, pointed out in the respective discussions on education and health, was the fact of ongoing resistance by the States to Commonwealth intrusions at a policy level. This situation between the Commonwealth and the States was observed by Ramamurthy (2012) in her research on tied grants and policy reform in public hospitals and schools. Importantly, she observed the nature of relations between the respective governments in terms of policy-making initiated by the Commonwealth was generally resisted: “the Commonwealth is susceptible to open or passive resistance from states and local stakeholders, causing the delay, remodelling or even the quashing of tied grants” (Ramamurthy 2012, 118).

#### **3.8.4 Federalism and Competing for Control**

The struggle for control between the Commonwealth and State governments concerning significant aspects of the education and health policy sectors demonstrates some key aspects and characteristics of the operation of Australian federalism. The strategy and tactics used by the Commonwealth to shift the two areas to concurrent status has been successful. This has resulted in it becoming dominant by successfully controlling much of the policy agenda, regardless of the fact it provides no services itself. It appears the real work is left to the States while the Commonwealth influences the extent and how they deliver services.

Centralisation of areas of service delivery is increasing and there is no end in sight for the States. Centralisation in the main is characterised by ongoing but unsuccessful State resistance and the relentless application of Commonwealth fiscal power.

### **3.9 Policing and Commonwealth Politics**

Before concluding the chapter, it is worth noting that the topic of policing and federalism has not been an issue of interest or attention from the media or academia in recent times. This is primarily due to the fact that there is little or no literature on the specific topic. The reality is it has been the subject of fierce political debate in the Commonwealth Parliament on a number of occasions since Federation. Three major debates took place in 1918 (Catts 1918; Ferricks 1918),<sup>33</sup> 1925 (Pearce 1957; Bruce 1925)<sup>34</sup> and 1957 (Ward 1957; Evatt 1957; Fraser 1957; Kennelly 1957; Aylett 1957; Spooner 1957).<sup>35</sup> All of these debates and legislation that followed centred on the primary federalism issue of the Commonwealth's role in respect to policing. Labor consistently opposed Coalition government initiatives to provide federal police agencies and did not even countenance a role for the Commonwealth in the enforcement of its own laws.

The grounds for Labor opposition to Commonwealth policing according to the parliamentary debates were consistent and took the view a national police agency would be used by conservative governments to suppress unions and stifle political opposition. This Labor view concerning Commonwealth policing changed with the election of the Whitlam Government and likewise continued in Opposition.

Importantly for the policy position of all successive Commonwealth governments after 1979, there has been continuous bipartisan support for all

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<sup>33</sup> Parliamentary debate concerning a no confidence motion in Prime Minister Hughes centred on his government's continuance of funding of the Commonwealth Police.

<sup>34</sup> Parliamentary debate concerned the establishment of the Peace Officers Guard to be used to break the strike on the wharves in NSW and WA where these governments stopped their police forces from assisting Commonwealth officers in breaking the strike.

<sup>35</sup> This was the most vitriolic opposition to establishing a Commonwealth police agency and harked back to the bitter 1951 *Banning the Communist Party* referendum and surrounding debate and the subsequent Labor Party schism.

policing legislation in the Commonwealth Parliament. The point of mentioning the debate about Commonwealth policing, from a federalism perspective, is that having bipartisan support in the parliament has ensured that the advancement of Commonwealth policing has been a less arduous task for federal governments. As will be seen later, bipartisan support is an important factor when considering how a changed federalism impacted on policing and other areas of government services.

### **3.10 Conclusion: Federalism and Centralisation**

The conclusion reached from the discussion on Australian federalism is that it has displayed an increasingly centralised trend. This has been as a result of the Commonwealth's activism being driven by the need, both real and perceived, to deal with an increasingly complex range of problems that affect the electorate. The recent experience of traditional State responsibilities like education and health provided a clear example concerning this view of the evolution of federalism in Australia.

The discussion on federalism used a range of literature that was discussed in the chapter. That material showed there was widespread agreement that the balance of power between the Commonwealth and States has changed and the federation has become more centralised, especially since the Whitlam government of the early 1970s. This trend continued under successive Commonwealth governments, regardless of their political ideology. Traditionally, Labor was centralist and Liberal decentralist. "The Labor party has had a strongly centralising 'overarching conception of federalism' that has deeply influenced its practice over the decades since Federation" (Fenna 2012b, 583).

Interestingly in parliamentary debates concerning Commonwealth policing, Labor consistently opposed Coalition government centralisation initiatives and did not even countenance a role for the Commonwealth, even in the enforcement of its own laws. This Labor view concerning Commonwealth policing changed with the election of the Whitlam Government and likewise continued in Opposition. After

1979, bipartisan support has been the hallmark of policing legislation in the Commonwealth Parliament.

The extent of centralisation in the federation has increased over the past forty years in the traditionally State owned areas of education and health, and it appears that this may also be the case for policing. Much of the capability to centralise power by Commonwealth governments was because it simply had the desire “to take the lead position in any area of policy it chooses” (Jones 2008, 171) and set its own agenda in those fields. The Commonwealth seems to have had considerable scope to pick and choose what areas of public policy and service provision it becomes involved in, *vis-a-vis* States primarily mandated to specific areas of service delivery. To go further in respect to the implied ambitions of the Commonwealth, former Labor Premier and Federal parliamentarian Carmen Lawrence recently speculated—“It may be, as some have suggested, that we are witnessing the death throes of the States as anything other than service providers for Commonwealth-devised programs” (Lawrence 2013).

There are a number of competing views—such as cooperative, coercive and pragmatic federalism—which describe and explain federalism and its role in changing government services like policing. At this point no conclusion concerning policing can be made. Instead, the logical sequence from here is to consider in detail the experience of policing in Australia since 1970 in the context of the changed paradigm, and where appropriate explore the linkage to federalism.



## CHAPTER FOUR: THE NATIONAL INTEGRATION OF POLICING

### 4.1 Introduction

This chapter explores the evolution of Australian policing with emphasis on the social change, political and focusing events along with the decisions that set in motion the process of national integration that occurred after 1970. The chapter aims to characterise and explain the journey policing took to get where it was by 2010.

The chapter analyses the changes to Australian policing that occurred between Federation and the 1970s and then focuses in greater detail on the periods 1980 to 2000 and 2001 to 2010. Over this thirty-year period, the aggregated sum of resources provided to policing by governments grew at a rate greater than increases in both the population (nationally and in each State and the two main Territories) and the Consumer Price Index (CPI).<sup>36</sup> In particular, over the two most recent periods the Commonwealth's involvement in policing grew from a relatively low base in 1979 to providing one of the larger police agencies (out of the eight) in the nation. For such a major change to occur within the structure of government, and in such a short time-frame, this was unprecedented. Thus, the Commonwealth's recently acquired role in policing is the logical focus of the chapter, for this it will be argued in this and later chapters, is the reason why Australian policing has changed forever. Fundamentally, this change has been facilitated through the operation of Australian federalism and its institutions.

Underpinning the evolution of policing was the significant increase in crime rates across Australia that became a major problem for governments at all levels in the federation. Importantly, the increased criminal activity was for the first time recognised as being linked in many aspects to the activities of national and international organised crime groups. This was one aspect of the findings of a number of royal commission inquiries undertaken by both the Commonwealth and State governments (Woodward 1979; Williams 1980; Costigan 1980). The other

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<sup>36</sup> Appendix A, Chart 14 and 15 demonstrates this proposition.

aspect of the findings was the independent State police agencies were not structured, resourced or empowered to respond to crime operating beyond their borders. There were also a number of *focusing events* (Birkland 1998) interrelated to the other events and problems that clearly accelerated change in policing and led to national integration being achieved.

In setting the scene for considering how policing grew generally and how Commonwealth policing grew specifically, it must be acknowledged that governments at all levels also grew over this period at a greater rate than ever before. This view is supported by Novak: "Public expenditure by all levels of Australian government, as a share of gross domestic product (GDP), is now about 39 per cent (2014). Prior to the global financial crisis (GFC), in 2007 08, the spending to GDP ratio was 35.8 per cent. Prior to the election of the Whitlam government in December 1972 it was 27 per cent of GDP. This represents a massive increase in the size of government in Australia" (Novak 2014, 1). It was further concluded about the size of government that "the clear suggestion that can be drawn from the available measures is that governments in Australia have grown in size over the long run and especially since the second half of the twentieth century" (Novak 2013, 44). This view has been supported by Stephen Kircher's research into the growth of government: "The growth in the size of government in Australia is subject to relatively little scrutiny or debate. According to former Australian Treasury Secretary Ken Henry, 'the close to 6 percentage points of GDP [gross domestic product] expansion in government expenditure during the Whitlam Government has never been reversed. And I think I can safely say that it never will be'" (Kircher 2011, 1).

The chapter begins with a historical narrative. It then brings together the analyses and information concerning sub-national and Commonwealth policing and details the evolution and development of policing in a social and political context, which led to the current Australian policing structure and arrangements—the national integration of policing.

This chapter sets the scene for the next, which in the context of the Australian federation and system of government, analyses the shift in policing and explores the drivers that were responsible for change.

## **4.2 Australian Policing Background—1901 to 1979**

In the federation discussions and conventions of the 1890s, policing was never discussed in the context of the enumerated powers to be provided to the Commonwealth. The only mention of Commonwealth policing involved the matter of which government would be responsible for providing a police force for the new, yet to be identified, location of the national capital. In the discussion of 28 January 1898, at the Melbourne Federation Convention it was agreed: “If the Commonwealth undertakes the government of a piece of country only 10 miles square, it must completely govern that country, including the establishment of its own force of police” (Barton 1898). The interpretation of the position taken by Barton and evidently also supported by the other delegates was the States would be left to police their own jurisdictions, while the Commonwealth would take responsibility to police any territories. It never precluded the Commonwealth from policing and administering its own laws but obviously from the start of Federation it chose not to have its own police force.

Up to 1979 the Australian police structure was basically operating as it had since Federation and in the colonial years,<sup>37</sup> with the States carrying full responsibility for local policing and the Commonwealth relying on the State police for most of its policing needs. As well, all prosecutions of Commonwealth offences were undertaken in State and Territory courts (still the case for most criminal offences) using their criminal law procedures and laws of evidence. There were eventually two Commonwealth Territory police forces providing state-like policing services to the Northern Territory (1926) and the Australian Capital Territory (1927). For all intents and purposes these operated independently from the

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<sup>37</sup> Appendix B provides a summary of colonial policing. At Federation each colony had a single police force. Previously most colonies had decentralised policing but it was finally centralised in each colony by 1898 (Tasmania was the last colony to centralise).

Commonwealth bureaucracy and were under the control of the Administrator of the NT and the Governor-General, respectively.

The Commonwealth did establish four police agencies over that period, but they were police agencies in name only and their functions were mostly outside what was defined at the time to be *policing*. It should be noted it was only in 1917 when the first agency was established. The four agencies were:

1. A *Commonwealth Police Force* was established in 1917, under the regulations of the *War Precautions Act 1914* (Cth). The Force existed primarily to monitor the activities of war-time unlawful associations in Queensland and was disbanded in 1919.<sup>38</sup>
2. The *Commonwealth Investigation Branch* was established by administrative means in 1919 and focussed on national security. In 1945, it was re-named the *Commonwealth Investigation Service* (CIS) with responsibility for investigation and security concerning Commonwealth government responsibilities. In 1949 the national security function was handed over to the newly established Australian Security and Intelligence Organisation (ASIO).
1. In 1925 the *Peace Officers Guard* was established as a result of the Commonwealth government's inability to enforce its laws on the waterfront in respect to the British seaman's strike and union blockades of the wharves. It continued until 1960.
2. The *Commonwealth Police Force* was established in 1960 by amalgamating the Peace Officers Guard and CIS.

It is noteworthy that the first meaningful foray into policing by the Commonwealth came in 1960 when the second Commonwealth Police Force was established.<sup>39</sup> Its main function was physical security and some investigations of property crime (i.e. fraud and stealing from Commonwealth agencies and

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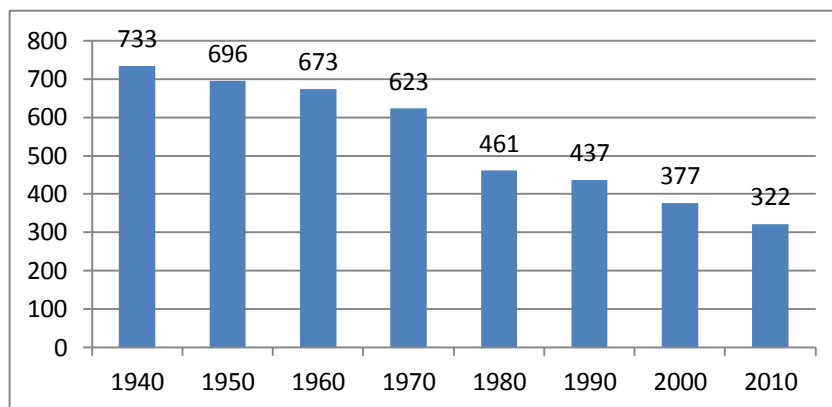
<sup>38</sup> The impetus for the action was an incident in November 1917 in which eggs were thrown at Prime Minister Billy Hughes at a conscription rally in Queensland. When Hughes ordered a Queensland policeman to arrest the assailant the officer responded that he did not accept Hughes' authority and only recognised Queensland laws.

<sup>39</sup> This was the second Commonwealth Police Force in name but this one was established by legislation while the original was established administratively.

departments). Later the Commonwealth Police established a national intelligence unit, the Australian Crime Intelligence Centre (ACIC) to work with the State and Territory police agencies. However, the Centre was unsuccessful in that role, serving as only a collector of statistics and not an effective intelligence provider (Williams 1980, B174–175).

The function of the State and Territory police agencies over this period had not changed significantly and it was only in the late 1960s that the actual functions of policing began to expand because of a number of significant economic, social and cultural changes (Manne 1999; Mukherjee 1987; Crowley 1986). Interestingly, the ratio of people to police officers decreased substantially from the Second World War—i.e. there are now more police per head of population. Figure 4.1 illustrates this fact. It should be noted these statistics have been derived from the Australian Year Book series, which from its inception used this form of measurement to assess how many people in the population there were for every police officer employed by governments. (Currently police numbers to population are measured on officers per 100,000 population basis).<sup>40</sup>

**Figure 4.1: Police officers in proportion to population in Australia 1940–2010**



After the Second World War, Australia enjoyed great economic prosperity and linked to economic prosperity and social and cultural change was the recreational use of illicit drugs that resulted in a cohort of drug addicts, funding their habit with petty property crime. The consequences of the new phenomenon

<sup>40</sup> Statistics derived from the following ABS Australian Year Book series (YBA): 1940 YBA 1942–43 Pp. 192 & 263; 1950 YBA 1954 Pp. 330 & 505; 1960 YBA 1963 Pp. 306 & 684; 1970 YBA 1973 Pp. 130 & 473; remainder of years derived from Appendix A Table 1 and Table 11.

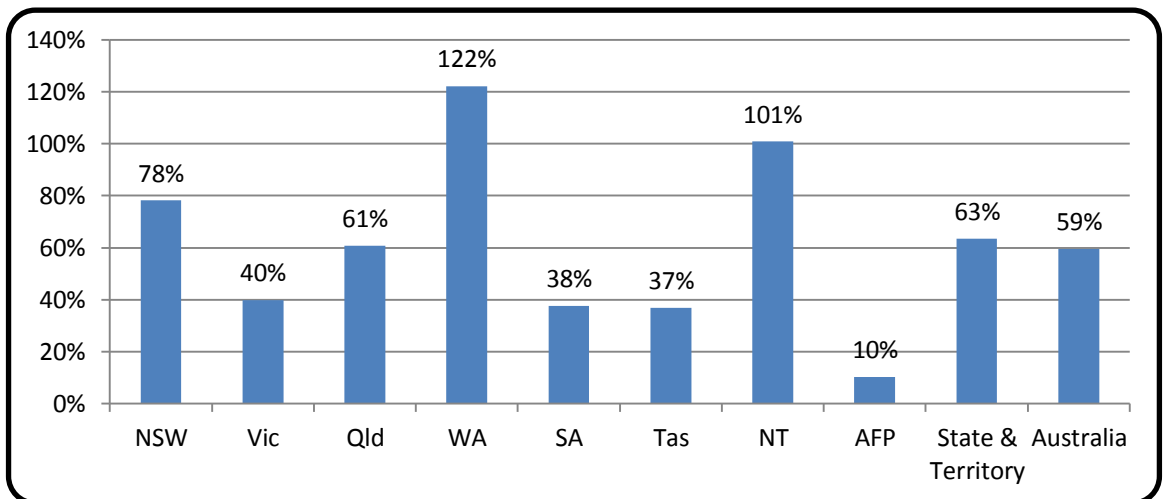
of illicit drug use were extraordinary and considered to be a major factor responsible for increases in crime levels never before experienced in Australia (Mukherjee 1986; Crowley 1986; Mukherjee, Neuhaus and Walker 1990). By the end of the period the scope and range of police functions was beginning to change for State and Territory police agencies and this was the beginning also of the annual independent record-keeping process of police by the Australian Bureau of Statistics (ABS). The personnel statistics were crudely accounted for in the *Australian Year Book* series that was first begun in the 1940 *Year Book* and was expanded to provide more in-depth statistics after 1990. It was only in the 1981 *Year Book* that Commonwealth Policing was recognised in the police aggregate statistics.

### **4.3 Policing Developments 1980 to 2000**

The twenty year period from 1980 to 2000 was one of marked change to policing in Australia in many respects, but primarily by the Commonwealth expansion into this area of traditional State responsibility and service delivery. 1980 represented the effective starting point for the shift that changed the policing landscape forever. At the start of the period policing was still dominated by the State police agencies and the newly formed AFP was the nation's second smallest police agency. According to ABS statistics, over the next twenty years Australia's population increased by 32 per cent with some States and Territories having significant growth like Queensland (60 per cent), NT (62 per cent) and WA (50 per cent). South Australia (16 per cent) and Tasmania (11 per cent) had below average population increases. The larger States of NSW and Victoria maintained consistent growth rates of 26 per cent and 23 per cent respectively. Over the same period inflation was calculated at 104 per cent.

On the basis of the rudimentary statistics for population and inflation, personnel numbers and funding for the period increased disproportionately over the 20 year period. What occurred across all police agencies was an accelerated growth trend and of note is the AFP grew at the smallest rate in terms of Personnel.

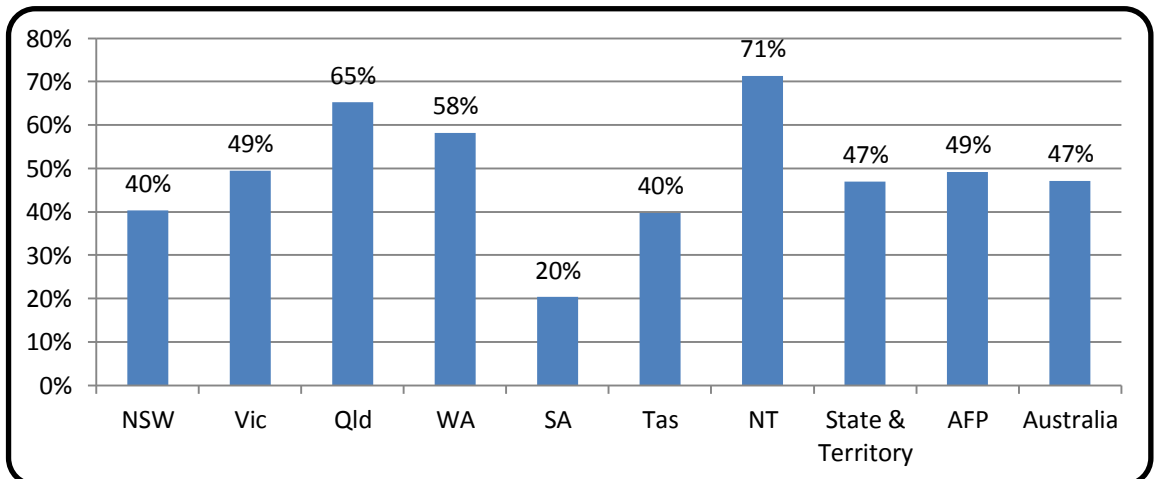
**Figure 4.2: Australian Police Agencies Personnel Growth 1980/81–1999/2000**



Source: Appendix A Chart 3

As to funding over this period, reliable uniform data relating to funding of police agencies was only available after 1993 and the period between then and 2000 is interesting. As evidenced from Figure 4.3, over this period AFP funding was just above national average.

**Figure 4.3: Australian Police Agencies Funding Growth 1993/94–1999/2000**



Source: Appendix A Chart 6

A new issue that had an impact on policing and was something outside the scope of the normal problem-driven variables was *managerialism* (Vickers and Kouzmin 2001). Police agencies like all other government agencies increased their administrative resources and internal structures to cope with the demands for increased statistics and information on agency performance. What a police agency

did and how it went about its business became a part of the agency's function after the 1990s. Labelled as *managerialism* in this analysis, additional resources for police agencies were provided by government to cope with the new requirements mandated by all governments. The extent and complexity of information required by government varied in jurisdictions but regardless of that the size and complexity of agency annual reports for all agencies evidenced the substantial increase of resources needed to service the mandated information and collection of data. By 2000 *managerialism* was adding functions and contributing to additional personnel and funding. This growth caused by it would continue into the next decade.

The early 1980s also saw for the first time a new strategic approach to the crime problems affecting the nation and several key initiatives were undertaken by the Commonwealth government with the support of the States. These included the formation of the Australian Police Ministers Council (APMC) in 1980; the establishment of the Australian Bureau of Criminal Intelligence (ABCI); and the creation of the National Crime Authority. All three provide clear evidence of policing being changed and in particular it was a business that had to address problems of a national and international nature. These three entities are considered in more detail later in the chapter when the political developments related to the expansion of policing in general, and Commonwealth policing in particular, are considered.

Interestingly, when taking into account indicators of growth for agencies as provided in the Statistics Appendix A—AFP personnel grew by 30 per cent in the first ten years of the period and then decreased by 14 per cent over the next ten years. Over the whole period as stated previously, it grew by 10 per cent, well below the average rate. By the end of the decade the AFP was simply treading water and not going anywhere. There was a shortage of personnel and resources to cope with the demand on existing tasking and the agency was looking to raise its profile (Baker 2004, 151).

By the end of the millennium the AFP had been around for 20 years and when it and the NCA were factored into the structure of Australian policing, policing had become more national in character with Commonwealth policing by 2000

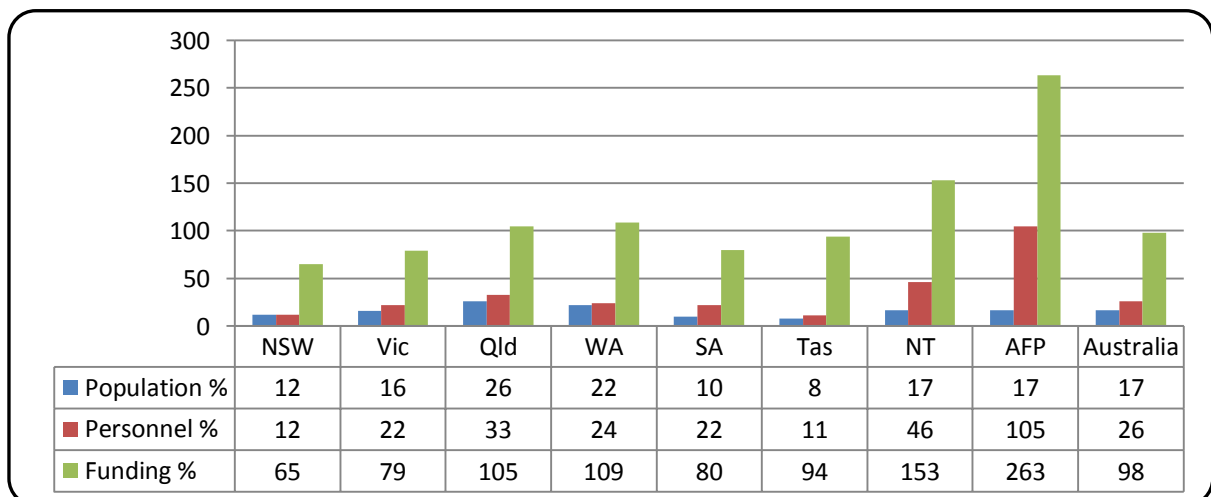


established as a legitimate component. However, the relative size of Commonwealth policing was in decline in the later part of the period and from 1993 on did not enjoy the same expansion and profile of State agencies (Baker 2004, 150). This was all about to change with events and political decisions to come after 2001.

#### 4.4 Contemporary Policing Developments 2001 to 2010

Policing in Australia changed significantly again after 2001 as a result of decisions made on a political level by both Commonwealth and State governments. The growth of subnational policing grew in terms of personnel and funding at a rate proportionate to the population increases of each State and Territory, while the AFP grew at a far greater rate in terms of both personnel and funding. Figure 4.3 demonstrates the respective increases of population, agency personnel and funding for the ten year period.

**Figure 4.4: Comparison of Growth for Population, Police Personnel and Funding, 2000/01–2009/10**



Source: Appendix A Chart 15

The chart reveals two distinct experiences across policing for the decade. The first experience involved the sub-national agencies that grew in terms of personnel and funding. Funding grew at a much greater rate than personnel numbers.

Additionally, over the decade *managerialism* drove many changes and was motivated by increased executive government accountability for agencies in terms of efficiency and effectiveness. This created new police agency internal organisations dedicated to both quantitative and qualitative data collection and research, and was a uniform trend for all agencies (Vickers and Kouzmin 2001; Fleming and Scott 2008).

The second experience involved Commonwealth policing, and as the chart demonstrated, the national population grew by 17 per cent over the period yet the AFP had a significant rate of expansion in both personnel and funding, much greater than the sub-national agencies. Clearly, something occurred in the decade to increase AFP personnel by five times the rate of State and Territory police and four times the rate in respect to funding.

The '9/11' terrorist attacks in the USA in 2001 and later the 2002 Bali bombing were focusing events that presented the Commonwealth and State governments with threats of terrorism to Australia and challenged governments to provide a policing structure capable of dealing with the threat (Baker 2004; McFarlane 2007; Keelty 2008; Williams 2011; Deflem 2005; Lemieux 2010). Additionally, there was clearly a link between terrorist groups and international and national organised crime groups. The problem of organised crime had been bubbling away since the 1970s and the reality was the intelligence-based strategy centred on the NCA and ABCI was ineffective. Terrorist and organised crime groups had many links and in the Middle East and Western Asia there were prime examples of the synergy between groups producing opium and funding terrorism, *narcoterrorism* (Clark 2008).

The perceived dual threat of terrorism and organised crime to Australia was a theme taken up with enthusiasm by the Commonwealth government and this led to the 2002 *Leaders Summit on Terrorism and Multi-Jurisdictional Crime*,<sup>41</sup> attended by State, Territory and Commonwealth government leaders. Appendix E contains documents that relate to the Summit and the main intergovernmental agreements

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<sup>41</sup> The Summit was held on 4 April 2002 at Canberra and was initiated by the Prime Minister.

that followed, many that directly affected policing. The developments and changes to policing are considered later in the chapter.

It was clear by the end of 2010 that the previous thirty year period had provided significant changes to policing as policing in 2010 bore no resemblance to the past structure found in 1980, and was even substantially different to that of 2000.

Recounting the change to policing in terms of its main causes and how it was facilitated is the next aspect to be considered in the chapter and this is undertaken under two intertwined headings over the whole period 1970–2010. Firstly, social change and the related increase in crime are considered in the context of it being an important precursor that led to changes in policing. Secondly, the political decision making by governments to change policing is considered.

#### **4.5 Social Change and Crime**

After the Second World War, Australia enjoyed great economic prosperity and by the 1980s a serious crime problem developed—“Reported crimes for Australia have risen by almost two-thirds, from 845,923 in 1980-81 to 1.41 million in 1988-89” (Walker and Henderson 2003,1) and “this rising level of reported crime has provoked reactions at many levels of society” (Walker and Henderson 2003,1-2).

From a policing perspective the most serious area impacting on State agencies was illicit drugs use that developed from the 1970s and resulted in an inordinate increase in property crime: in 1973–74, 110,000 cases of breaking and entering were reported; this more than doubled by 1982–83 to 260,000 reports (ABS 1985, 236). The 1985 Year Book of Australia provides some meaningful statistics and discussion on the increase in drug crime, beginning with a table on drug seizures by federal agencies from 1977 to 1984. In 1974, 11.7 kilograms of heroin and 741 kilograms of cannabis were seized. The respective figures for 1984 were 101.5 kilograms of heroin and 6,912 kilograms of cannabis (ABS 1985, 235). The consequences of the new phenomenon of illicit drug use and related crimes put pressure on governments to increase police resources. This fact was noted in the

same Year Book (1985) while Mukherjee and Dagger also commented that because of these crime increases “community groups react by persuading governments to take stronger measures against crime. The 15 years between 1973-74 and 1987-88 have seen a 59 per cent increase in the number of uniformed police officers in Australian police departments” (1990).

The serious illicit drug and crime problems in Australia were dramatically increasing (like other Western nations) and policing these problems became a critical issue for governments. The functions of the State and Territory police agencies had not changed significantly and it was only in the late 1970s when the actual functions of policing began to expand because of these related problems (Manne 1999; Mukherjee 1987; Crowley 1986). Significantly, at this time the Commonwealth government was solely responsible for the prevention and detection of the importation of illicit drugs such as cannabis, cocaine and heroin.<sup>42</sup>

The type of crimes attributed to drugs ranged from low level property crime such as house breaking and stealing, to the successful operation of both national and international organised crime groups trafficking in drugs and other illicit commodities. Also accompanying organised crime activities in the 1960 and 1970s was related violent crime and murder. The drug related murders of Donald McKay in 1977 (Woodward 1979; Stewart 1983) along with that of Isabella and Douglas Wilson in 1979 (Stewart 1983) provided a great deal of media attention and community concern and became significant focusing events (Birkland 1998). These murders made politicians focus on these infamous activities that were occurring in Australia.<sup>43</sup>

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<sup>42</sup> Under section 51.(i) *trade and commerce with other countries*—the Commonwealth has been responsible for policing the borders of Australia for all illicit drugs since Federation and the Customs Department has always held primacy of that responsibility. With the increase in illicit drugs being imported into Australia in the 1960s, the Federal Narcotics Bureau (FNB) was established in 1969 within the Customs Service with the role to prevent and detect the importation of illicit drugs and its policing role was justified on the basis of the Australian Government ratifying the *Single Convention on Narcotic Drugs 1961*.

<sup>43</sup> These murders were subject to investigation in the two royal commissions referenced above. The finding of both identifies organised crime concerned with drug trafficking in Australia were responsible for the respective murders.

By the early 1970s policing still remained a State responsibility, but the size of the crime problem in Australia had expanded and so did the size of the police agencies. Across the nation there was a substantial increase in crime that resulted in a reactive response of increases in police staff and resources along with new powers to deal with crime. This trend continued according to Walker and Henderson: “Taken at face value, crime statistics in Australia during the 1980s and 90s showed increases of around 450% in rates of reported crime” (Walker and Henderson 2003, 1). Thankfully, a more strategic approach began in the late 1980s after the crime rate got even worse.

The Commonwealth role in policing remained relatively low key due to inadequate resourcing to deal with the obvious problems occurring across the nation, much of which emanated from outside the national border. Crime was becoming a matter of concern in national politics and for the first time, in the 1972 federal election, policing related policy proposals and initiatives were put to the electorate by the Labor Party. Labor leader Gough Whitlam advocated police reform with the Commonwealth role in policing to be “expanded and its role extended to that of the American FBI” (Whitlam 1985, 599–600). This elevated the crime problem in Australia to the national political stage and evidenced that it had become a political issue.

Labor won the election and was arguably the first Commonwealth government to place policing on its political agenda as it had a clear obligation to expand Commonwealth policing and took immediate action. This entailed administrative action to establish the *Australia Police* in 1975 (NAA 2013a and b). A Commissioner was appointed and several *Australia Police Gazettes* were published (Archives ACT 2010). The relevant legislation never reached Parliament before the government was dismissed. However, successive conservative governments also harboured similar sentiments to Labor and this culminated in 1979 with the formation of the AFP and a number of other police related initiatives by the Commonwealth government.

Following on from the Whitlam period, two new areas of crime became pivotal in the evolution of policing across Australia after the 1970s and continued to

impact significantly on changing the structure and making it more centralised. These two areas of crime—*organised crime* and *terrorism*, were first seen as major threats in the 1970s.

#### **4.5.1 Organised Crime**

As mentioned previously, crime increased alarmingly from the 1970s onward (Mukherjee and Dagger 1990; Walker and Henderson 2003) to the 1980s (Mukherjee and Dagger 1990)—but why was this occurring? This was a question governments were keen to know the answer to and it was speculated in many quarters that organised crime was operating unchecked and was the major contributor to this phenomenon. This perception was derived from public concern fuelled by the media and political campaigners complaining of rising crime rates and corruption. One significant event that focused attention on this was the disappearance and murder in 1977 of leading anti-drugs campaigner Donald McKay. He had publicly identified the operation of the Italian Mafia in drug trafficking in New South Wales and gained a great deal of media and political attention. As a result of the pressure of the McKay case and other well publicised instances of murder and corruption attributed to organised crime, a range of government inquiries were commissioned. These inquiries were extraordinary as they were empowered to operate outside of the normal investigative processes and given coercive powers in respect to the collection of evidence and questioning of witnesses. The most significant inquiries were:<sup>44</sup>

1. 1980 Commonwealth, Victoria, Queensland, Western Australia and Tasmania Government. *Australian Royal Commission of Inquiry into Drugs*. Commissioner: Mr. Justice E. S. Williams
2. 1980 Commonwealth and Victoria Government. *Royal Commission on the Activities of the Federated Ship Painters and Dockers Union*. Commissioner: Mr. Frank Costigan Q.C.
3. New South Wales Government:

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<sup>44</sup> It should be understood the date of each Royal Commission is when the final report was handed down. All commenced at least one year before the date noted.

- a. 1979 *Royal Commission into Drug Trafficking*. Commissioner: Mr. Justice Woodward
  - b. 1983 *Royal Commission of Inquiry into Drug Trafficking*. Commissioner: Mr. Justice D. G. Stewart (investigated matters mainly concerned with crime in the 1970s)
4. 1979 South Australia Government. *Royal Commission into the Non-Medical Use of Drugs*. Commissioner: Professor Ronald Sackville

The broad findings of these inquiries was that the significant growth in the recreational use of illicit drugs like cannabis and heroin had created an illicit market for these commodities and that huge profits were being made by criminal organisations. Directly related to the operation of these crime groups was accelerating levels of violence and corruption not previously experienced in Australia.

These inquiries provided evidence of the effectiveness of organised crime groups operating across the nation and the connection of those groups to international criminal organisations. Evidence also revealed significant gaps in policing structures and systems to counter these problems. The Woodward Royal Commission for example articulated the extent of the drug problem and the activities of these groups:

In the eastern States, the existence of a drug menace in the form of cultivation, production and distribution of cannabis (marijuana), the importation of heroin and to a lesser degree, of opium and cocaine, the illegal supply, and obtaining for non-medical use of medical drugs, and the illicit manufacture and distribution of medical and non-medical drugs (Woodward 1979, 1).

The findings of these inquiries also established that organised crime groups had been responsible for numerous murders, serious assaults and incidents involving intimidation and corruption.

The once doubted and in many cases rejected outright hypothesis, that organised crime did exist and was operating effectively in Australia was proven, and it became evident that the problem required urgent attention by governments and their police agencies. The recommendations emanating from the inquiries primarily

identified the need for increased enforcement strategies involving increased policing in this area. The Woodward inquiry recommendations went further and identified the inability of the existing policing structure in Australia to cope with the criminal activity and related corruption in the expanding area of drugs and organised crime:

From a consideration of all the evidence before me, I believe that drug law administration in New South Wales, in both State and Federal hands is significantly less effective than it could be. The deficiencies that do exist lie in the characteristics of the respective administration structures, of lack of inter-agency co-operation, of proper planning and of logistical priorities (Woodward 1979, 1620).

The problem identified in this case was the inability of police agencies to cooperate and share intelligence and information. The Williams' findings were consistent with Woodward in respect to the problem and the inability of traditional police arrangements and structures in the country to deal with the problems. The inquiries in general also identified the need to revamp and upgrade the Commonwealth's police agencies in order to be more efficient and effective in respect to drug crime. Williams was of the opinion that the two Commonwealth police agencies, the Commonwealth Police and Federal Narcotic Bureau, had failed in their roles related to drug crime (Williams 1980, B164 and D89). Commonwealth policing in this area had to be reformed and given more resources to police the national border—effectively—constitutionally the Commonwealth's responsibility (Williams 1980, B178–181).

Subsequently, the NSW *Royal Commission of Inquiry into Drug Trafficking* was undertaken by Justice Donald Stewart (1983), that focussed on the burgeoning organised drug trafficking involving national and international crime groups interacting with NSW and Australian crime groups in the late 1970s and early 1980s. Significant identification of at least five murders in the late 1970s by one crime group became an indictment on the ineffectiveness of policing across the nation at the time.

By 1980 the threat from organised crime had been clearly demonstrated by the host of other formal inquiries (Mark 1978; Williams 1980; Woodward 1979) and



recognised by all governments in Australia to be a threat, sufficient to justify a range of initiatives and changes to policing. This recognition of the need to change was the starting point for the movement and shift away from the traditional structure and arrangements for Australian policing and heralded the beginning of change, characterised by much greater involvement of the Commonwealth and the national integration of policing.

#### **4.5.2 Terrorism**

The seventies also experienced another phenomenon that was international in character and managed to permeate Australian society—terrorism. The 1970s experienced many displays of organised terrorism throughout the Western world that began in the 1960s and peaked with the 1972 Munich Olympic Games attack and the killing of 11 Israeli athletes. This focusing event led Australia, like most other Western nations to develop response systems and a counter-terrorism capability. While responsibility was placed in the hands of State and Territory police, the Commonwealth Police force was expanded to provide physical security of airports, protection of diplomats and embassies in Australia. However, response at all levels remained a sub-national police responsibility.

Australia's response to terrorism was tested on home soil in 1978 with the Hilton Hotel Bombing. The Hilton Bombing was clearly a critical *focusing event* that motivated the government to take action and address the threat on a national basis (Crowley 1986,367–369; Mark 1978; McFarlane 2007). This approach emanated from the recommendations concerning terrorism in the 1978 Mark review. Mark subtly referred to the Commonwealth's enumerated powers as the constitutional basis for such a change to policing:

The Federal Government, responsible for Defence and Foreign Affairs, will sooner or later have to consider its inability to play a sufficiently influential role in the maintenance of law and order, since the latter activity will assume an increasing significance nationally and is likely more than ever to affect the interests of the nation in addition to those of the States comprising it (Mark 1978, 25).

Again it was found, as with the experience of organised crime, that the existing sub-national policing structure was inadequate for the times. What was to follow was a paradigm shift in Australian policing, orchestrated politically and resulting in the development of a nationally integrated structure.

#### **4.6 National Political Decisions and the Start of Change**

The proposition that is put forward at this point in the chapter is that as a result of the increase in crime in the 1970s, there was a major policy shift on the issue of policing by all governments, most importantly by the Commonwealth. Policing has been changed for ever and in the context of federalism, from a decentralised base it has become increasingly centralised and nationally integrated. The start of this change, as stated previously, began with the drug and crime problems first evidenced in the 1970s. However, the political debate concerning policing and role of the Commonwealth government cannot be conveniently attributed to only the events of the 1970s, as policing had been the subject of spirited political debate prior to this time in the Commonwealth Parliament.

It should be noted that there is a paucity of literature on policing and in particular the background and politics of the Commonwealth's involvement in policing, however, a good deal of information has been derived from parliamentary documents and Hansard on the topic.<sup>45</sup>

Little known or researched is the fact there were significant ideological debates in the Commonwealth Parliament on the specific topic of policing and the role of the Commonwealth in 1919, 1925 and 1957. What is clear from reading the records of the debates is Commonwealth policing had been vigorously opposed on ideological grounds by the Labor Party, while Coalition and Liberal governments supported the idea of the Commonwealth government taking an active role in policing. Interestingly, this appears to have gone against the traditional ideologies of both parties at the time, as it is generally accepted Labor supported centralism

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<sup>45</sup> The *Bills Digest No. 90 1999–2000 for the Australian Federal Police Legislation Amendment Bill 1999* (Cth) (Law and Bills Digest Group 1999) provides important information about the formation and development of the AFP. Parliamentary debates involving Commonwealth policing that took place in 1919, 1925 and 1957 are also very informative.

and the Coalition side of politics was oriented to States' rights and a decentralised approach to federalism.

The fundamental position taken in 1918 (Catts 1918; Ferricks 1918), 1925 (Pearce 1957; Bruce 1925) and 1957 (Ward 1957; Evatt 1957; Fraser 1957; Kennelly 1957; Aylett 1957; Spooner 1957) in parliamentary debates concerning Commonwealth policing by the Labor opposition, consistently resisted Coalition government centralisation initiatives and did not even countenance a role for the Commonwealth, even in the enforcement of its own laws. The Labor opposition to Commonwealth policing according to the parliamentary debates was consistent and took the view a national police agency would be used by conservative governments to suppress unions and stifle political opposition. However, by 1972, Labor had abandoned its long standing opposition to Commonwealth policing and this was made clear from the electioneering speeches of the Opposition Leader and soon to be Prime Minister Gough Whitlam (Whitlam 1985).

The first policy initiatives concerning Commonwealth policing and its expansion were articulated by Whitlam in his electioneering promises and were later reiterated after he was elected as Prime Minister. Whitlam considered Commonwealth policing needed to be expanded and it should play a significant role in policing across the nation. To do this he advocated the reform of the Commonwealth Police:

The Commonwealth Police Force will be upgraded to better pay and conditions to meet the growing threat of political terrorism and organized crime. Its facilities will be expanded and its role extended to that of the American FBI. The Commonwealth Police Force will become the key link between Australian law enforcement agencies and Interpol for the fight against international crime and drug traffic must be primarily a national task (Whitlam 1985, 599–600).

The decisive themes in his statement were two-fold: it placed policing for the first time on the political agenda in a federal election; and secondly, it publicly introduced the notion that some crime issues should be a Commonwealth responsibility and not left to the States—"the fight against international crime and drug traffic must be primarily a national task" (Whitlam 1985, 600).

After winning government Whitlam commissioned two inquiries into the Commonwealth's policing arrangements: *A report on the Commonwealth Police following an inspection by Kerry L. Milte* (Milte 1973); and the *Report to establish a national police force* by Secretary of the Department of Customs and Excise, Alan Carmody (1974). Both reports, *inter alia*, recommended the expansion of Commonwealth policing. As a result the government took the policy decision to form the Australia Police (NAA 2013a and b), an amalgamation of the Commonwealth; ACT Police Force; NT Police Force; and Federal Narcotics Bureau, into the one agency. The policy was implemented administratively but because of the dismissal of the Whitlam government in 1975, never reached the point of legislation (Parliament of Australia 2013).

The Fraser coalition government that replaced Labor was also not satisfied with the operation of the Commonwealth Police Force and wanted to construct a police agency that could service all of the needs of the Commonwealth government. Accordingly, it went back to the drawing board and in 1979, based on the recommendations of the *Report to the Minister for Administrative Services in the Organisation of Police Resources in the Commonwealth area and other related matters* (Mark 1978, 9), legislated to replace the Commonwealth Police with a purpose-built agency, the Australian Federal Police (AFP).

The 1979 initiative was a critical event from a political perspective—for the first time legislation to establish a Commonwealth policing agency was passed with bipartisan support. Labor had opposed this type of legislation when it had been presented in the 1925 and 1957 Commonwealth Parliament. This change in Labor policy was to significantly alter the *status quo* in Australian policing, and has been one of the reasons why Commonwealth policing expanded. The importance of bipartisan support for this policy cannot be underscored. This was a reform characterised by a fundamental policy shift by the Commonwealth to take sole responsibility for its own policing needs and no longer be reliant on the States.

The establishment of the AFP represented the implementation of the main recommendation of the 1979 Mark review into the Commonwealth's law enforcement requirements, but in reality such a coalition Government policy had

been in existence since 1976. Generally not well known is the fact that in 1976 the Commonwealth cabinet secretly decided upon the policy. This was done without consulting the States (NAA 2012b and c).

What had been lacking prior to 1979 was a trigger to justify the implementation of the 1976 policy decision by the Cabinet. The 1978 Sydney Hilton Bombing provided it with a focusing event to pull the trigger. Because of the bombing, the government instigated the Mark review, which *inter alia*, corroborated the opinions held by government of the ineffectiveness of the Commonwealth Police Force i.e. the shortcomings in Commonwealth policing, and recommended the immediate establishment of a new police agency.

Thus, beginning in late 1979 this once State-dominated area of service provision became national in character with the Commonwealth government becoming actively involved by establishing the AFP and providing it with the resources and powers to be on an equal footing with the State police agencies.

#### **4.7 Contemporary Politics and Change**

The formation of the AFP heralded the beginning of the Commonwealth's serious participation in policing. The period was characterised by steady growth in the 1980s and a marked downturn in the late 1990s. From a functional perspective, the period also saw several other important decisions made by the Commonwealth that expanded its scope and range of criminal investigation responsibilities. These related to the investigation of drug trafficking and importation; organised crime; and emerging and related white-collar crime.

The expansion of the AFP's scope began shortly after its formation when the Federal Narcotics Bureau was disbanded in 1982 and the responsibilities and functions, previously controlled by the Department of Customs and Excise were transferred to the AFP. Also, the protective service function of the former Commonwealth Police was taken away in 1984 and transferred to the newly formed Australian Protective Service (APS).<sup>46</sup> This expanded role for Commonwealth

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<sup>46</sup> The APS was reintegrated into the AFP in 2002.

policing was not only undertaken by the AFP but also by another new agency established in 1984, the *National Crime Authority* (NCA). On the face of it the NCA was a national police agency owned by all the Commonwealth and State governments, but in reality it was a Commonwealth police agency that existed until 2003 when it was replaced by another agency, the *Australian Crime Commission* (ACC).

Over the period to 2000 in addition to the formation of the AFP and NCA, two significant policy decisions were made by the Commonwealth with the support of the State and Territory governments. These policy decisions had a lasting influence on policing across the nation, especially for the expansion of Commonwealth policing. These were the formation of the APMC and secondly, the establishment of the conceptual framework for national common police services.

#### ***4.7.1 Australian Police Ministers Council***

The establishment of a formal council for the nation's police ministers as recommended by Mark was without doubt one of the most critical changes in Australian policing to benefit the Commonwealth government. The change was strategic as it established for the first time a formal and separate policy forum for policing at a political level. Prior to this the nearest equivalent was the Police Commissioners Conference, but that was clearly more tactical and lacked political authority. Importantly for the government, the policy forum allowed the Commonwealth to take a leadership role regardless of having the youngest police agency in the nation.

The starting point for the forum was a Mark review recommendation suggesting the establishment of a national body—"for co-ordination of all State and Commonwealth police activities which can be pursued more efficiently, more comprehensively and more economically on a collective basis" (Mark 1978, 8). The body was to be named the *Police Advisory Committee* (PAC) and was to be permanently chaired by the Commonwealth minister responsible for the AFP (Mark 1978, 8–9). As a result of the Commonwealth's negotiations on this matter with the States, the *Australian Police Ministers Council* (APMC) was established and

became the peak body for policy making along with having the primary governance responsibility for national common police services, which emerged after 1980.

According to the resolutions of the first meeting held in 1980, the States insisted upon a rotating chair (NAA 2012f); a clear demonstration of the States' perception of equality with the Commonwealth. The APMC continued meeting biannually until it was absorbed into the COAG ministerial council structure and although renamed—*Standing Council on Police and Emergency Management* (SCPEM), remains the peak national policy making body for policing.

Although not apparent, the formation of the APMC marked the first tangible indicator of Australian policing becoming national in character—nationally integrated, and undertaking a shift from a purely State government controlled public policy domain. From a political perspective the inclusion of the Commonwealth government in the policing policy forum recognised the national character of policing and that some responsibilities in this area now belonged to the Commonwealth or at the very least, were concurrent.

The motivation for this change was predominantly the developments and events previously discussed in section 4.5. These happenings in the 1970s and 1980s involved federal responsibilities and illicit drugs, terrorism and climbing crime rates across the nation. The responses to these events were also sped up by a number of focusing events such as the Wilson and McKay murders and the Hilton bombing. All contributed to the change in policing and the Commonwealth's new roles and responsibilities.

The formation of the APMC was an astute strategy and has been beneficial for Commonwealth policing. When the States signed up to the Council, they effectively recognised the role of the Commonwealth in policing and signed off on a new national policing structure. The obvious question coming from this subtle political outcome was whether the States actually understood the full significance of what they had done by joining the Council?

#### **4.7.2 Common Police Services**

The second Mark recommendation to be implemented related to the formation of the APMC and concerned the establishment and operation of what was to be labelled *National Common Police Services* or *common police services*. Mark recommended their establishment and the oversight by a “Police Advisory Committee chaired by the Minister for Administrative Services consisting of Ministers (or their representatives) responsible for the administration of police in every State and Territory” (Mark 1978, 8).

The concept of common services was based upon the problem identified by Mark that in many areas of policing—for example communication systems, criminal intelligence databases and forensic science technologies—there was expensive duplication because each police agency was attempting to provide individual systems and services. The duplicating of these systems and services could only be overcome by having national common services that each of the eight agencies shared. It was presumed benefits would flow due to economies of scale. Primarily the new AFP would be ideally positioned to provide such services given its perceived central role that Mark likened to the provision of such services by the *Metropolitan Police* in the UK.

At the time of the recommendation, there was already one common service operating in a rudimentary manner for State police agencies. Since 1942 the New South Wales Police had established and operated what was titled the *Central Bureau*, which provided a national service in respect of fingerprint identification and criminal record database for State agencies. The expansion of the Central Bureau database and the use of new identification processes facilitated by the advances in electronic and communication technology were suggested by Mark. In addition Mark identified new areas (many based on the finding of concurrent royal commission inquiries at the time) where benefits from common services would increase efficiency (decreasing costs) and effectiveness (more accurate and timely information and analysis of evidence). The areas identified involved criminal intelligence; forensic science; research and planning; education and training. Also recommended was a national police computer system to facilitate the timely and



accurate exchange of information and intelligence. These recommendations provided the starting point for a new approach to developing common systems with the aim of improving the efficiency and effectiveness of all police agencies.

As noted from the minutes of the first meetings of the APMC (NAA 2012f) the council members embraced the concept and established an array of common policing systems that were to benefit policing across Australia. Pivotal to the development of the common police services was the control of them at a political level by the APMC and critical to their success was the funding and support services provided by the Commonwealth government. Without this central funding, the common services would not have been developed to the extent where they are now essential for all police agencies in Australia. However, the obvious *quid pro quo* was the Commonwealth and its agency became more influential than the other jurisdictions, for it controlled the purse strings.

While Mark recommended that the AFP be responsible for providing the common services (Mark 1978, 8), the AFP did not take up this role. Each common service developed independently and became organisations in their own right. Nonetheless, the AFP gained some influence by taking administrative control of the ABCI and also providing the National Bomb Data Centre and Australia's Interpol agency. Additionally, Commonwealth funding became integral to developments of all common services and this is evidenced from the resolutions from the first APMC meeting minutes and resolutions (NAA 2012f). The full extent of Commonwealth involvement in these services is detailed in Chapter Five; however, it is suffice to say at this point that in the first eight meetings of the APMC, at seven of them the Commonwealth was asked and duly agreed to providing significant funding to establish the range of common services. Though not done in the usual manner of providing tied grants, the Commonwealth's fiscal power was on display in the realms of policing and certainly resulted in new influence in policing at a level never previously experienced.

## **4.8 Policing at 2000**

Australian policing at all levels expanded in the twenty-year period from 1980 to 2000 at a relatively steady rate of growth and greater than population and CPI growth. Commonwealth policing was a little different and went through two phases over its first 20 years. The first decade was one of development and growth, the second of decline. After 1990 “the AFP was experiencing reduced budget levels, restructuring and declining employee numbers” (Baker 2004, 150) and many members were deployed to other agencies and its role in Commonwealth policing was confused and fragmented (Baker 2004). Federal policing had been challenged over this latter part of the decade but survived, yet it was not prospering as expected.

One indicator of the AFP’s decline was that the agency had 11 per cent fewer staff in 2000 than it had in 1991. As Baker’s research revealed, the status and role of the AFP by 2000 was clearly on the decline. He evidenced this by considering the role of the AFP in the preparations for the 2000 Sydney Olympics. Even though it was the national police agency, it was scripted a small role that reflected its marginal status at the time. The agency was described as “an unheralded agency of the Attorney-General’s Department, a police organisation small and inconspicuous by comparison with the larger State police departments” (Baker 2004, 151).

A new millennium found the AFP and the NCA, the arms of Commonwealth policing, at low points. But all this was about to change for the two agencies, the former to be invigorated and expand exponentially while the latter was to be disbanded.

## **4.9 Policing after 2000**

The ‘9/11’ attacks in the USA in 2001 and later the 2002 Bali bombing were focusing events that presented the Commonwealth and State governments with threats of terrorism to Australia and challenged governments to provide a policing response capable of dealing with terrorism (Baker 2004; McFarlane 2007; Keelty 2008;

Williams 2011; Deflem 2005; Lemieux 2010). Additionally, there was clearly a link between terrorist groups and international and national organised crime groups. The problem of organised crime had been bubbling away since the 1970s and the reality was the intelligence-based strategy centred on the NCA and ABCI was ineffective. Terrorist and organised crime groups had many links and in the Middle East and Western Asia there were prime examples of the synergy between groups producing opium and funding terrorism, *narcoterrorism* (Clark 2008).

The perceived dual threat of terrorism and organised crime to Australia was a theme, once again, taken up with enthusiasm by the Commonwealth government and this led to the 2002 *Leaders Summit* on the topic, attended by the Prime Minister and State and Territory leaders. (Appendix E contains documents that relate to the *Summit* and intergovernmental agreements that followed).

#### **4.9.1 *Leaders Summit on Terrorism and Multi-Jurisdictional Crime***

The decisions that came out of this meeting of the nation's political leaders have been significant and highly influential for the structure of Australian policing. In April 2002 the Prime Minister and Premiers met at the *Leaders Summit on Terrorism and Multi-Jurisdictional Crime* to develop a policing strategy to address the dual threat of terrorism and organised crime (Dodson 2002; Chulov 2002a and b).

The summit was unconventional in many respects and atypical of the usual negotiations and outcomes involving Commonwealth-State forums at this political level. The States agreed to use constitutional means to hand over their criminal law powers concerning terrorism and to allow the government to establish a new high-level crime commission (Taylor 2002; Doherty and Banham 2002; Crabb 2002; Australia 2002 ). The NCA and ABCI were to be disbanded and absorbed into the Australian Crime Commission (ACC). Subsequently, all the States passed uniform legislation pursuant to section 51 (xxxvii) of the Constitution to refer these powers to the Commonwealth government. The summit was another crucial event for Commonwealth policing, as it expanded the scope of its functions and range of tasks, while the State governments yielded these functions (Gallop 2002; COAG

2004). The newspaper coverage at the time is telling of the unity of mind in the all Labor Party sub-national leaders, as illustrated by the photo in the Melbourne Age newspaper of 5 April 2002.



State leaders arrive for their meeting yesterday. From left Mike Rann, South Australia, Claire Martin, Northern Territory, Peter Beattie, Queensland, Geoff Gallop, Western Australia, Steve Bracks, Victoria, Jim Bacon, Tasmania, Bob Carr, New South Wales and Jon Stanhope, Australian Capital Territory. PICTURE: ARI SOUL

The respective articles concerning the Summit and aftermath in four of the major newspapers of the time: *The Australian*, *The Age*, *The Sydney Morning Herald* and *The West Australian*, reflected the extent of the political realities and a distinctive acceptance of the centripetal shift in policing that this meeting's outcomes (subsequent agreements and legislation) resulted.

The build-up to the summit was punctuated by both the Prime Minister and some State Premiers speaking about a range of policing matters, in particular Prime Minister Howard warning that the State "law enforcement agencies were ill-prepared and ill-suited to tackle the scourge of terrorism" (Mallabone 2002). Organised crime was also on the agenda for the Summit and it received similar treatment and billing to terrorism. The Coalition federal government clearly had an agenda in what it wanted and how it would deal with the eight Labor governments. Obviously, the two levels of governments had opposing political ideologies and the outcomes of the meeting in this context were phenomenal. There has been little analysis of the summit's important outcome for policing but it is speculated that

individual States could not afford to take the risk of policing terrorism and multi-jurisdictional crime alone.

The newspaper articles concerning the summit and later developments resulting from it are listed in the following compilation of their headlines and by-lines, set out in chronological order, starting prior to the summit and concluding after the participants returned to their jurisdictions.

***The Australian, 2 April: Premiers backing for Commonwealth terror role***—“plans for an increased role in criminal investigation for the Commonwealth and its law enforcement arm, the Australian Federal Police, will be the main focus of Friday’s summit, in a meeting which will be crucial to how future governments deal with crime” (Chulov 2002b).

***The Age, 4 April: PM seeks control in fight on terror***— “State leaders to give to Canberra State legal and police powers to fight national and interstate terrorism” (Dodson 2002).

***The West Australian, 4 April: Summit row over agenda***—Both the WA Premier and Police Minister voice concern over “the signs coming out of Canberra are they do want to grab power in this area” (Clery 2002). This area involved policing in the two areas of terrorism and organised crime.

***The Age, 5 April: Premiers back new crime agency***—State and Territory leaders agreement to support Commonwealth policing initiatives concerning terrorism and multi-jurisdictional crime and also allow Commonwealth police to investigate State offences (Crabb 2002).

***The Australian, 6 April: Police anger at AFP role***—The Police Federation (federation of all AFP, State and NT Police unions) and unnamed senior police express concern with expansion of AFP into State police roles and powers. Commonwealth and premiers agreed to this expansion which is “absolutely crucial to the future of law enforcement in the country” (Chulov 2002a).

***The Australian, 6 April: Terror on Commonwealth police beat***—Premiers agree to “cede responsibility for terror related crime fighting to the Commonwealth. The decision reached at yesterday’s transnational crime summit in Canberra, also gives

the AFP a potential veto over State-based inquiries if they are suspected to be linked to organised crime” (Chulov 2002c).

***The West Australian, 6 April: Leaders to scrap crime watchdog***—WA Premier's concerns expressed on 4 April are alleviated and the agreement from the summit is seen as a “major step forward” (Mallabone 2002). Federal policing expanded and to take responsibility for crime previously a State responsibility and States formally hand over powers.

The articles evidence a mostly positive approach to the issues by the States, although not all matters were cut and dried. Some tinkering with the terrorism legislation followed several years later (2005) as a result of the protestations of the leaders of the ACT and Victoria. The reported concerns of the national police union never gained traction and were never followed up.

The reforms from the Summit took some time to implement, but they were clearly demonstrated in the passage of uniform legislation<sup>47</sup> in every State and Territory concerning terrorism and the later *Agreement on Counter-terrorism Laws* and in particular recital 3 which reads: “The parties consider it appropriate to facilitate comprehensive national application of those offences by means of State references in accordance with paragraph 51 (xxxvii) of the Commonwealth Constitution” (COAG 2004).

In the context of Australian federalism, was the summit and its outcomes an example of federalism at work? Did this event exemplify what Mark considered was needed from federalism to make policing effective and keep up with the times? To reiterate Mark’s view:

*Those who framed the Constitution can hardly have foreseen the motor vehicle and the aeroplane. Arrangements for the governance of State which were adequate for trade, public order and the social requirements of the nineteenth century are not appropriate for dealing with serious wrongdoing which transcends State jurisdictions and affects the interest*

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<sup>47</sup> *Terrorism (Commonwealth Powers) Act 2002* (NSW); *Terrorism (Emergency Powers Act) Act* (NT); *Terrorism (Commonwealth Powers) 2002* (Qld); *Terrorism (Commonwealth Powers) Act 2002* (SA); *Terrorism (Commonwealth Powers) Act 2002* (TAS); *Terrorism (Commonwealth Powers) Act 2002* (WA); *Terrorism (Commonwealth Powers) Act 2003* (Vic); *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT).

*of the Commonwealth as a whole; terrorism, narcotics, and organised crime being perhaps the three most obvious examples (Mark 1978, 2)*

On consideration of the inputs and outcomes from the summit, it is argued that this event was an example of modern federalism at work. Previously, a similar event was the firearms summit held in 1996 after the Port Arthur massacre, where the Commonwealth took a similar approach and achieved its goal of a national firearms policy, regardless of having no enumerated powers in this area.

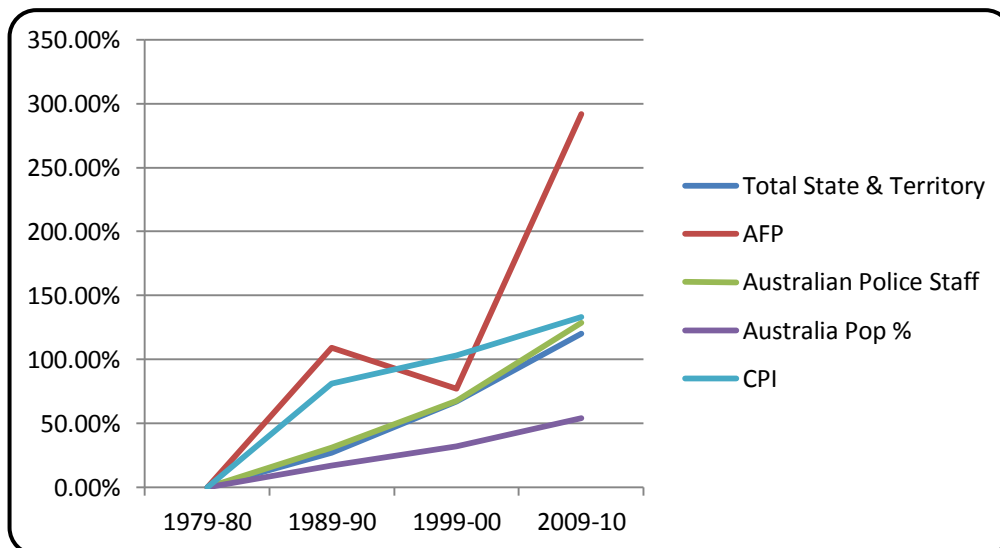
There has been some criticism of the outcomes of the 2002 summit in respect to terrorism by noted commentator and academic George Williams. In his review of ten years of terrorism laws, he had reservations that Australia's anti-terrorism laws were passed "with inordinate haste and insufficient parliamentary scrutiny" (Williams 2011, 1163). The article also demonstrated that the Commonwealth had achieved its goals and dominated this area as a result of the summit. The states opted to let the Commonwealth take control of this high risk area: "The states possess considerable legislative responsibility in the field of criminal law. Nevertheless, they decided against enacting their own comprehensive anti-terror law regimes, and instead referred their legislative power to the Commonwealth so as to enable the making of national laws" (Williams 2011, 1152). It should be noted that the outcome from the *Summit* may have also been shaped by the fact that the focusing events, i.e. 9/11 and Bali Bombing, were "creating pressure on the dominant policy community or policy monopoly to open up policy making and accept change" (Birkland 1998, 55).

From a policing and federalism perspective, this process of calling State and Territory leaders together at short notice with the Commonwealth having set the agenda has been effective. The outcomes bear testimony to that proposition and clearly this is an example of the contemporary approach to federalism that impacts on policing. More importantly, it evidences the effectiveness of Australian federalism in such circumstances, allowing the efficient undertaking of change to the benefit of the nation.

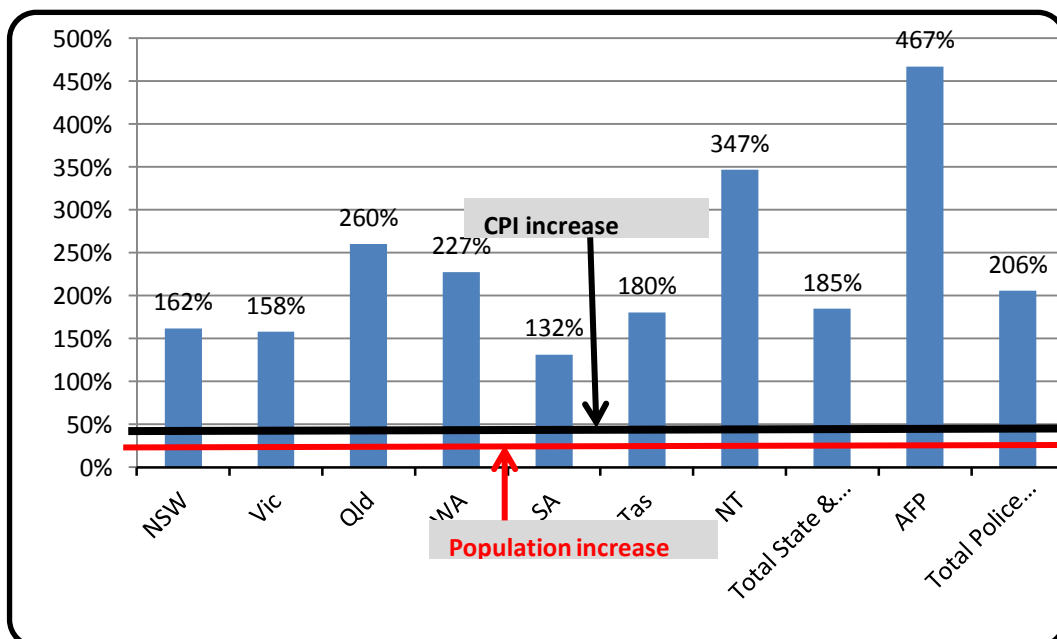
## 4.10 Policing at 2010

By the end of the decade policing at a sub-national level had grown to the highest levels ever experienced in terms of personnel and funding and on a *per capita* basis according to the most recent *Report on Government Services*.

**Figure 4.5: Comparison police staff increases with CPI and Population 1979/80 to 2009/10**



**Figure 4.6: Comparison of Growth of CPI, Population, Police Agency Funding 1993/94 to 2009/10**





It is important to note that Commonwealth policing grew at a greater rate and volume in all respects to the sub-national agencies. Apart from the obvious increases in the scope of functions and range of tasks derived from the Leaders Summit, additional criminal laws had been passed by the Commonwealth Parliament that also helped to expand the scope of enforcement responsibilities for Commonwealth policing. New criminal laws included:

1. Crimes against humanity—crimes introduced into the *Crimes Act 1914* (Cth):

1. 1994—the exploitation of children by child sex tourism made a crime under Part 111 (child sexual tourism);
2. 1999—sexual slavery became a crime in division 270: Slavery and sexual servitude; and
3. 2002—people smuggling became a crime under section 73.

2. Cybercrime and related Internet offences involving crimes against persons and their property e.g. lottery, property investment and EBay scams

- 1995—Part 10.7 of the new *Criminal Code Act 1995* (Cth) includes a range of cybercrimes; and
- 2001—The *Cyber Crime Act 2001* (Cth) was introduced in 2001 to cover the broad range of cybercrimes.

3. Northern Territory Intervention.

1. 2007—with the passing of the *Northern Territory National Emergency Response Act 2007* (Cth) and the *Appropriation (NT National Emergency Response) Act* (No.1 and 2) 2007 (Cth), a specific role in enforcement of provisions of the Act was placed upon the AFP.

These new crimes and policing responsibilities were matters which directly or indirectly emanated from the enumerated powers of the Commonwealth.

Federal policing expanded exponentially as clearly evidenced by the statistics in Figure 4.3 for this period and demonstrated the two-speed growth in policing between the Commonwealth and sub-national components. This change in policing has been exceptional and when it is considered in light of the fact

Commonwealth policing only effectively came into operation in 1980. How this occurred in a federal political environment has been shown previously in the chapter but it is worth summarising prior to the conclusion to the chapter.

#### **4.11 A Summary of Australian Policing—1970 to 2010**

The evolution of policing began in the 1970s as a result of escalating crime rates having an impact on all levels of government. What followed has been a range of political decisions and subsequent policy that changed policing. Obviously, many of the issues associated with the increase in crime had relevance to Commonwealth's enumerated powers and it was considered that *prima facie* the government should play a role (Whitlam 1985; NAA 2012b and c; and NAA 2013 a and b). After the AFP was established and following the range of Commonwealth reforms and changes, especially the increase in the volume of Commonwealth criminal law, policing became truly national in character.

Without doubt the sub-national agencies increased their personnel and funding over the period and this was in the main at a greater rate to population increase for the respective jurisdictions. Commonwealth policing on the other hand has by the end of its first 30 years expanded exponentially in terms of the common metrics of personnel and funding. Additionally, the scope of Commonwealth policing functions expanded, especially after 2001.

It is noteworthy in the context of the overarching theme of federalism—the States did not make this a matter to quarrel over with the Commonwealth. The changes could be characterised as bipartisan, consensual and cooperative. As shown in the previous chapter, in areas like education and health, conflict between the federal partners over turf is the norm. In the case of policing, all the evidence so far points to the States supporting the expansion Commonwealth policing.

The experience of policing demonstrated that Australian federalism operated in a very effective way in response to the problems and threats faced by governments requiring a police response. The recognition by the States that the Commonwealth was best positioned to respond, due to its obvious fiscal and

jurisdictional power, to national and international crime problems, resulted in critical changes to policing. The significant outcome from this example of federalism in action was the centralisation of some aspects of policing along with the national integration of policing, away from a decentralised approach dominated by the States.

#### **4.12 Conclusion—Nationally Integrated Policing**

Since 1972, successive Commonwealth governments have aspired to service their own police requirements and to place Commonwealth policing agencies on an equal footing with the established sub-national agencies. This aspiration manifested itself in the form of Commonwealth policies, developed and ratified in 1972 and 1976. The substantive implementation of the policy began in 1979 with the establishment of the AFP. Incremental growth of Commonwealth policing followed at a positive rate until 2001, thereafter it has grown exponentially compared with sub-national policing. The AFP is the main Commonwealth police agency and it plays a powerful role in Australian policing, hitherto non-existent before the 1980s. It has achieved this transition by both constitutional and sub-constitutional means and this has been underwritten by Commonwealth funding. It has also achieved this position in the policing structure with bipartisan political support and the unusual spectacle of State cooperation and consent.

From a political perspective the obvious result from what occurred federally in terms of legislation and funding resulted in the establishment of policing as a national policy domain (*vis-à-vis* sub-national) shared concurrently between the federal partners. This national integration of policing can alternatively be described as a paradigm shift where many aspects of policing were increasingly centralised with the support of the sub-national governments. The structure of Australian policing is now very different from the way it was at Federation and even in the 1980s. Australian policing is now nationally integrated and not an exclusively sub-national responsibility. This demonstrates a new approach to federalism, different to other areas of government that have been previously considered.

The chapter has identified the extent of the paradigm shift in policing and described the changes in detail that begs the question of what were the drivers that brought about the change to policing within Australia's federal political architecture.

## **CHAPTER FIVE: THE DRIVERS OF CHANGE**

### **5.1 Introduction**

The previous chapter described the place of Australian policing in the federal system from Federation to 2010 and concluded it had changed substantially—and indeed been transformed into a nationally integrated model where the Commonwealth plays a significant role. The task for this chapter is to dig deeper and identify the drivers of these changes. What were the drivers of change within the political and government framework of the Australian federation?

From the information provided in the previous chapters it is apparent that the most critical event for Australian policing was the Commonwealth government's actions in 1979, establishing the AFP. However, this only established an agency—what led to that event and what drove the expansion of the agency and Commonwealth policing from then is the real story. The analysis of the events and policy decisions that drove change is then the focus of the chapter. The analysis identifies three interrelated drivers of change: *Spillovers*; *New Commonwealth Responsibilities*; and *Economies of Scale*.

The chapter starts by employing a matrix to set out the key drivers and drills down into the associated issue or the problem for each driver, then identifies the relationship to the legal framework and finally considers the mechanisms applied to drive change in the area. The contents of the matrix are then analysed and explained in detail. This leads to the conclusion that discusses the new policing structures and the inextricable link between the development of policing on a national basis and the role of federalism.

### **5.2 Drivers of Change in Policing**

The distinguishing features of the change to policing between 1980 and 2010 have been twofold—the bipartisan approach to change; and the support from the sub-national governments. This consensual way of going about change, and developing the Commonwealth's expanded role, is atypical given conflict and resistance are the

hallmarks of centralising initiatives in the normal course of party, political and Commonwealth-State relations.

The research concerning the developments and change to policing in the past thirty years identified three main drivers to be responsible for change.

1. *Spillover* of policing responsibilities beyond the capability of the States.

Spillover involves matters where the cost or benefits of an activity go beyond the borders of the jurisdiction in question. In such cases it is beneficial for the delivery “of the public good at a higher level of government” (Geys and Konrad 2010, 4). Spillover has been recognised in a range of federalism literature as an important issue affecting federalism. It has been used to explain and even justify change in responsibilities between governments in Australia (Fenna 2007, 187; Twomey and Withers 2007, 46; Twomey 2007, 59; Walsh 2008, 557; Wanna *et al* 2009, 10–11).

2. *New Commonwealth Responsibilities* directly related to its enumerated powers and to matters beyond the jurisdiction of the States. There are two aspects to this—firstly matters that can be directly linked to the enumerated powers of the Commonwealth. Secondly, new areas of government interest that arose after the Constitution was written e.g. air navigation, electronic communications technology and environment. The latter class of matters needed new powers to be negotiated between the Commonwealth and States: “The allocation of legislative power in the Constitution, which was undertaken in the 1890s, needs to be reconsidered today. It needs to take into account changes in the world, such as new developments in information technology and communication, as well as globalisation and the operation of modern economies” (Twomey and Withers 2007, 46; Twomey 2007, 61).

3. *Economies of Scale* aimed at increased efficiency and effectiveness for policing across all jurisdictions. Like spillovers, a great deal of change to federalism in Australia has been explained and justified on the grounds of the need for economies of scale—“economies of scale are highly relevant to the undertaking of alignment of responsibilities” (Wanna *et al* 2009, 10). A number of commentators have identified this concept as being an important factor in changing federalism in

Australia. Walsh provides the example of “centralising tax collection” (Walsh 2008, 570) as being a beneficial example of economies of scale at work while Twomey and Withers (Twomey and Withers 2007, 46) and Twomey (Twomey 2007, 58) also recognised the importance of this for future reforms and developments in federalism.

These drivers are explored under their respective heading and considered in light of the events of the time and policy decisions that triggered the respective changes and reforms. The following matrix summarise five key elements to be discussed under the individual headings: Issue/Problem; Source of Problem/Issue; Constitutional/Legal Empowerment; Government Action; and Legislative Action.

**Figure 5.1: Drivers of Change for Commonwealth Policing 1980–2010**

Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
<b>Spillover</b>	<i>Organised Crime</i>	<p>Significant increase in national crime rate from 1970 attributed to illicit drugs trafficking by organised crime groups</p> <p>1970–1990 Media coverage exposing judicial and police corruption along with violent crime aimed at anti-drug campaigners and police</p> <p>1978–1983 Royal Commissions<sup>48</sup> and Mark Review identify organised crime threat to the nation. Serious and organised crime undermines border integrity and security. It erodes confidence in institutions and law enforcement agencies, and damages economic prosperity and regional stability.</p>	<p>Trade &amp; Commerce 51(ii)</p> <p>External Affairs 51(xxix)</p> <p>Referred Powers 51(xxvii)</p>	<p>1978–1983: Four Royal Commissions into organised crime</p> <p>1984 National Crime Authority (NCA) established</p> <p>1994 Coad Review of AFP to investigate organised crime</p> <p>2003 Australian Crime Commission (ACC) replaces NCA and subsumes ABCI</p>	<p><i>National Crime Authority Act 1984</i> (Cth)</p> <p><i>Australian Crime Commission Act 2002</i> (Cth)</p> <p><i>Criminal Code Act 1995</i> (Cth): Part 9.1 (serious drug offences), 9.4 (dangerous weapons), 10.2 (money laundering)</p>

<sup>48</sup> 1. Commonwealth, Victoria, Queensland, Western Australia and Tasmania. 1979—*Australian Royal Commission of Inquiry into Drugs*; 2. South Australia. 1979—*Royal Commission into the Non-Medical Use of Drugs*; 3. NSW. 1979—*Royal Commission into Drug Trafficking*; 4. Commonwealth and Victoria Government. 1980—*Royal Commission on the Activities of the Federated Ship Painters and Dockers Union*; and 5. NSW. 1983—*Royal Commission of Inquiry into Drug Trafficking*.



Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
	<i>Terrorism</i>	1970s several serious international terrorism attacks 1978 Sydney Hilton bombing and resultant Mark Report 2001 9/11 USA attacks 2002 Bali Bombing	External Affairs 51(xxix)-13 international conventions concerning terrorism <sup>49</sup> Referred Powers by State-51(xxvii)	1979 Commonwealth (Cwth) Agreement with States on counter-terrorism (CT) 2002 States refer terrorism powers 2003 Amended CT agreement 2003–2005 Cwth CT legislation, and AFP CT investigation unit formed	<i>Criminal Code Act 1995 (Cth)-Part 5.3</i> <i>Criminal Code Amendment (Terrorism) Act 2003 (Cth)</i> <i>Anti-terrorism Act 2005 (Cth), No1 and 2</i>
<b>New Commonwealth Responsibilities</b>	<i>Crimes Against Humanity</i>	Australia ratifies treaties and conventions on war crimes and crimes against humanity Media coverage of exploitation of children overseas by Australian sex-tourists	External Affairs—International Agreements, Conventions and Treaties-51(xxix) Immigration-51(xxvii)	Federally funded research on issues Federal parliamentary reviews recommend new legislation and legislation passed	<u><i>Crimes Act 1914 (Cth)</i></u> 1994: Part 111 (child sexual tourism) and later moved to div. 272 <i>Criminal Code Act 1995</i>

<sup>49</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963); Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage) (Montreal, 1971); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988); Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome, 1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988); Convention on the Physical Protection of Nuclear Material (Vienna, 1980); International Convention against the Taking of Hostages (New York, 1979); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973); International Convention for the Suppression of Terrorist Bombings (New York, 1997); International Convention for the Suppression of the Financing of Terrorism (New York, 1999); International Convention for the Marking of Plastic Explosives for the Purposes of Detection (Montreal, 1991); International Convention for the Suppression of Acts of Nuclear Terrorism (New York 2005)

Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
		People smuggling problem (refugees and sex slaves) highly publicised by media			<u><i>Criminal Code Act 1995 (Cth)</i></u>  1999: div. 270 Slavery and sexual servitude, 2005: div. 271 (people trafficking for sexual slavery)  2002: div. 268 (genocide and war crimes) compliments <i>War Crimes Act 1945 (Cth)</i>  2002 s.73 People Smuggling <i>Criminal Code Act 1995</i>
	<i>Cybercrime</i>	Facilitation of existing crimes by cyber means—computers and computer networks  New criminal offences using Internet and computers, not subject to existing law	Posts, telegraphic, telephonic and other like services-51(v)  External Affairs-51(xxix)  Trade & Commerce-51(ii)	Cwth funded research on problem for APMC  Cwth parliamentary reviews recommended new legislation  Cybercrime role for AFP and establish High Tech Crime Operations section (HTCO) and Australian High Tech Crime Centre (AHTCC)	<i>Criminal Code Act 1995 (Cth)</i> -Part 10.7  <i>Cyber Crime Act 2001 (Cth)</i>

Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
	<i>Firearms Control and Gun Buy-Back</i>	1996 Port Arthur Massacre with 35 people murdered (21 wounded) by Martin Bryant using lawfully owned firearms	Trade & Commerce-51(ii) Acquisition of property on just terms-51(xxxi)	Cwth called APMC meeting and jurisdictions agreed to uniform firearms laws and action to decrease firearms  Cwth imposes tax to fund 'gun buy-back' (640,000 firearms)  National uniform gun laws passed by States and Territories  Importation of firearms and parts restricted	<i>Customs Act 1901</i> (Cth)-Amended  <i>National Firearms Program Implementation Act 1996 and 1997</i> (Cth)  <i>Medicare Levy Amendment Act 1996</i> (Cth)  State & Territory Firearms Acts-Amended
	<i>International Policing</i>	UN request for police peace-keeping force for East Timor  Regional instability in Pacific nations	External Affairs 51 (xxix)	AFP Unit for overseas deployment  Agreement with State and Territory police agencies for secondment of officers	<i>Australian Federal Police Act 1979</i> (Cth)  Interagency Agreements
	<i>NT Intervention</i>	NT aboriginal communities health and crime problems	Power to make laws for territories Section 122	Excised special areas of NT subject to special Cwth law  Cwth fund additional police and infrastructure for NT	<i>NT National Emergency Response Act 2007</i> (Cth) and <i>Appropriation (NT National Emergency Response) Bill (No.1 and 2) 2007</i> (Cth)

Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
Economies of Scale	<i>Criminal Intelligence</i>	Independent agency intelligence systems  Mark Review & Royal Commissions into drugs and organised crime identified need for national criminal intelligence agency and systems	Peace, order and good government-section 52  Appropriation of funds-section 83	1981 ABCI established as a Common Police Service by APMC  1988 ABCI roll out national criminal intelligence system (ACID)  2002 ACC took over national criminal intelligence role from ABCI	ABCI Intergovernmental Agreement superseded by concurrent <i>ACC Act 2003</i> (Cth) and ACC Intergovernmental Agreement
	<i>Forensic Science Standards and Accreditation</i>	Standalone jurisdictional systems  No uniform national standards and accreditation of laboratories and staff	Peace, order and good government-section 52  Appropriation of funds-section 83	1980 APMC taskforce to investigate national forensic science body  1992 National Institute of Forensic Science (NIFS) formed to provide national standards and accreditation agency  2007 NFIS subsumed into ANZPAA as a directorate	National police interagency agreement

Driver	Issue/Problem	Source of Issue/Problem	Constitutional/Legal Empowerment	Government Action	Legislative Action
	<i>National Police Information systems</i>	Independent agency information systems  Mark Report recommended national police information systems	Peace, order and good government-section 52  Appropriation of funds-section 83	1990 National Exchange of Police Information (NEPI)  2000 CrimTrac agency formed and subsumed NEPI	Intergovernmental Agreement—CrimTrac Agency 2000
	<i>Research and Planning</i>	<i>Ad hoc</i> research and planning in police agencies  Mark review recommendation for nation police research and planning agency.  Criticism of police exhibit handling by Wilson Royal Commission	Peace, order and good government-section 52  Appropriation of funds-section 83	1980 APMC Secretariat to report on establishing National Police Research Institute (NPRU)  1983 NPRU established as NCPS  2007 NPRU functions subsumed into ANZPAA	National police interagency agreement for NPRU and later ANZPAA

### 5.3 Spillovers

The concept of *spillover* as a driver of change for public goods in federations is well recognised and in the context of police services involving the investigation and enforcement of criminal law, is clearly applicable. Spillover involves matters where the costs or benefits of an activity go beyond the borders of the jurisdiction in question. In such cases it is beneficial for the delivery “of the public good at a higher level of government” (Geys and Konrad 2010, 4) as the lesser level is incapable of delivering the service because it may lack the resources, jurisdiction or political will. The latter issue of political will is relevant because when the Federation was established there was no political need to change the *status quo* for policing. Primarily crime was an issue that was confined within State borders and Commonwealth criminal laws were non-existent.

The case of crime not spilling over State borders was for the first sixty years of Federation a major reason why policing remained the responsibility of the States. Importantly, it should be noted that the Australian federation is highly centralised and has only six States. The federation is characterised by a huge land mass; small population; and the few large cities and major population centres are located far apart. Thus, spillover has only been a recent phenomenon as opposed to the US for instance, which is highly populated and decentralised. Spillovers have been a major issue for US policing since the 1920s and this is due to the large number of States, many small in area and in close proximity to one or several other States and large cities.

In the case of the two tier Australia federal system, spillover is caught by the Commonwealth. Geys and Konrad in the study of spillover involving the federal government of Germany, provide in their discussion an example concerning policing, specifically drug trafficking, which is “likely to entail considerable spillovers to other jurisdictions, which may ask for an assignment of this task to a higher level of government” (Geys and Konrad 2010, 5). The history of drug trafficking in Australia has many parallels with the German experience (which is discussed later in Chapter Six).

In Australia, the incidence of spillover has in the case of policing led to the Commonwealth government taking responsibility in a number of areas, beginning in the 1980s and formally through constitutional means several times since 2002. As the matrix shows, there were two main areas of spillover, *organised crime* and *terrorism*, which the States have been prepared to concede as *national* matters, and best dealt with by Commonwealth policing. These two areas of spillover drove change and are considered in that context.

### **5.3.1 Organised Crime**

Organised crime is a term much used in discussion on policing and crime yet defining it is not easy. The ACC does not have a clear definition regardless that this aspect of crime is its central focus. Its annual assessments discuss the aspects of organised crime like impact, risks and threats but never begin with a clear expression or definition of what is *organised crime*. The FBI, perhaps the most experienced agency in the world when it comes to organised crime, defines it “as any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole”.<sup>50</sup> A contemporary and Australian definition is offered by Gavin Briggs in his paper on the risk to critical infrastructure in the North West of Australia: “Organised crime is a structure that includes two or more people whose purpose is to commit one or more serious crimes or offences for financial gain or material benefit” (Briggs 2010, 1).

From a federalism perspective, it should be understood that international and national characteristics of organised crime in Australia have had a significant impact on policing, *prima facie*, requiring a Commonwealth response because of its related enumerated powers i.e. foreign affairs; communication; and border control etc. The 2011 ACC organised crime assessment begins by identifying the key external characteristics of organised crime: “increased globalisation, escalating cross-border

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<sup>50</sup> FBI webpage Organized Crime – Glossary - available from <http://www.fbi.gov/about-us/investigate/organizedcrime/glossary>

movement of people, goods and money, emerging international markets and rapidly developing and emerging technologies provide a fertile operating environment for organised crime” (ACC 2011, 3). Thus, from a federalism perspective the nature of organised crime brings the Commonwealth into play on jurisdictional grounds.

Until the AFP was established, organised crime was clearly a State policing responsibility and was a developing area for policing from the 1970s. The Commonwealth’s first serious interest in organised crime was in 1984 when it took the policy decision to establish the NCA and since then it has been an area of policing in which the Commonwealth has taken an increasing interest.

It should be understood that policing and organised crime in Australia has been topical since the 1970s mainly because of the wide media reporting of the problems, in particular, associated police corruption. Much of the reporting of these problems had a factual basis and emanated from the findings of the Royal Commissions undertaken into these matters at the Commonwealth and State level. The Williams, Woodward and Costigan inquiries investigated and identified cases of corruption involving police and organised crime (Woodward 1979; Costigan 1980; Williams 1980). These independent investigations identified amongst other things, the inability of the existing police structure to deal effectively with the crime-related problems like corruption, which stemmed from organised crime and operated nationally and beyond State borders. Mark also identified the nature of the problem in 1978 when he commented on the deficiencies in policing in relation to organised crime. He considered it was in the interests of the Commonwealth to be involved in policing in the areas of terrorism, narcotics and organised crime. Specifically these criminal matters were “serious wrong-doing which transcends State jurisdictions and affects the interests of the Commonwealth as a whole” (Mark 1978, 2).

Apart from the formation of the AFP with an interest in this area of crime, the Commonwealth government took the unprecedented action in 1984 of establishing the National Crime Authority (NCA) to deal with organised crime or as



it was termed in the Act—*relevant offence*<sup>51</sup>. This term fits within the current scope of the ACC's organised crime operations. The NCA was provided with exceptional powers including power to force witnesses to testify in camera and extensive covert surveillance powers. The agency had a specific mandate to pursue organised crime and it operated in the main independently outside the normal policing arrangements and institutions. In some cases it duplicated ongoing State police investigations and also independently investigated police and judicial malfeasance related to organised crime.

The NCA was a controversial police body and antagonised the policing *status quo* (Baker 2004, 149) much of which was to do with its investigation of police corruption along with its secretive approach and having intrusive powers and extensive resources unavailable to the other policing agencies. In 1994 the Coad Review of Commonwealth law enforcement was undertaken and this resulted in a number of recommendations that critically enhanced the AFP. One of the recommendations implemented was ratifying the role of the AFP in the investigation of organised crime. The investigation of organised crime was made unequivocally an AFP function and additional resourcing was provided.

The global nature of organised crime affecting Australia was clearly evidenced in the findings of the royal commission inquiries of the 1970s and 1980s along with the well documented experience of other western nations with organised crime. Another important factor affecting Commonwealth police

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<sup>51</sup> "relevant offence" means an offence-

- (a) that involves 2 or more offenders and substantial planning and organization;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna into or out of Australia, or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind

agencies power to investigate organised crime is there must be a related enumerated power that legitimises its function in dealing with these matters. In the context of spillover, the agency taking responsibility for matters must have the legal jurisdiction and operational capability to investigate these matters. In Australia it is accepted there is a link between organised crime and the Commonwealth's enumerated powers, which is recognised under the doctrine known as *dual or multiple characterisation*. This can be summarised as Commonwealth laws do not have to be directly linked to the enumerated power but "the connection between the law and the power must be genuine and not 'so inconsequential, tenuous or distant that [the law] cannot sensibly be described as a law *with respect to* the head of power'"<sup>52</sup> (Ratnapala and Crowe 2012, 242). An example of this is the connection between the external affairs power and international drug trafficking treaties, which provided the federal police with power to police this area in States and Territories. Related to this is the fact that the Commonwealth under the *external affairs* power has ratified a number of international agreements, conventions and treaties concerning organised crime involving money laundering, travel documentation and trading in chemicals (relative to narcotics, drug precursors and explosives). Other enumerated powers concerning organised crime involve a range of postal and electronic communication crimes (like cybercrimes) along with immigration and trade related crimes.

Jurisdiction in respect to the Commonwealth policing of organised crime may have been considered to be problematic up to 2003 but from thereon it has become unequivocally a function of Commonwealth policing. In 2003 the Australian States took the action of collectively authorising the Commonwealth to establish the Australian Crime Commission (ACC) as a replacement for the NCA (Campbell 2002; Norberry 2002). The Commonwealth Parliament also legislated to create additional criminal offences directly and indirectly concerned with organised crime and also provided additional investigation powers in this area (along with terrorism crime) for the AFP. This recognition of the role of Commonwealth

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<sup>52</sup> *Re Marine Union of Australia; Ex parte CSL Pacific Shipping Inc* (2003) 214 CLR 397 at 413 (per curiam)

policing in organised crime was a specific outcome from the Leaders' Summit (Prime Minister, Premiers and Chief Ministers) on 15 April 2002. The main outcome was a unanimous agreement "by all Leaders, which do indeed constitute an enhanced national framework for dealing with terrorism and transnational crime" (Campbell 2002, 6480).

The ACC legislation provides for a Board (section 7B) responsible for overseeing the functions (section 7C) with the permanent Chair being the Commissioner of the AFP [section 7B (3)].<sup>53</sup> The majority of the board members come from Commonwealth agencies and the State and Territory police commissioners are also board members. There is an inter-governmental committee (IGC) established under the Act (section 8) constituted by one minister (generally the Police Minister) from each State and Territory and presided over by the Commonwealth Minister. The IGC oversees the operation of the ACC and primarily investigates federally relevant criminal activity [section 7C (1) (c)].

The key motivator for driving change in this area was summarised by Senator Campbell in the Australian Crime Commission Second Reading speech: "To give effect to the Leaders' Summit resolutions in relation to the establishment of the ACC, Commonwealth, State and Territory Governments have agreed that the ACC will be constituted by Commonwealth legislation as a Commonwealth law enforcement agency, supported by State and Territory legislation" (Campbell 2002, 6480).

This outcome from the Leaders' Summit in 2002 provides evidence of spillover and this being a significant driver for the Commonwealth government's expansion in policing. The journey to reach this end began with the findings and recommendations of five royal commissions, the Mark review and significant milestones along the way that included the formation of the AFP, the establishment of the NCA, the Coad Review and the establishment of the ACC. These milestones have been accompanied by the progressive increase in legislation and funding for law enforcement by the Commonwealth government for the policing of organised

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<sup>53</sup> *Australian Crime Commission Act 2002* (Cth)

crime. Commensurate to this has been the recognition by the States, as was spelt out in the Communique from the Summit that the policing of organised crime (and terrorism) was required to be undertaken at a higher level and “that the national interest would be served by all governments” (Gallop 2002). The culmination of this approach was the 2003 constitutional referrals. This event and the outcomes from it clearly provided good evidence of the reality of spillover in this area and also recognise how the States saw the benefit of such a national approach to this problem.

### **5.3.2 Terrorism**

As a result of the Mark review, a formal inter-governmental agreement was established in Australia to provide appropriate counter terrorism (CT) arrangements, which fundamentally relied upon State police agencies for managing and responding to any terrorism incident. Prior to the establishment of the national CT arrangements, terrorist acts were dealt with as State or Territory crimes. However, only the larger State police agencies had the staff and resources to respond to a terrorist attack and investigate the consequences. Regardless, it was never tested whether the State police agencies were equipped and trained sufficiently to respond to a terrorist attack or deal with the aftermath. After the formation of the AFP, the agency did not take on national CT responsibility and for many years was only concerned with CT in the Australian Capital Territory. State police forces dominated the CT training and response arrangements established by the Commonwealth government in conjunction with States.

The Standing Advisory Committee for Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV) was established in 1979 and operated as a section of the Commonwealth Attorney-General’s Department. A critical aspect of the CT arrangements was the acceptance of the inability of police to deal with many potential terrorist attacks and the necessity to use elements of the Australian Defence Force (ADF), particularly the Special Air Service Regiment (SAS) in times of emergency. The arrangements for this to occur were based upon the doctrine of

*Assistance to the Civilian Authority* that is derived from section 119 of the Constitution: *Protection of States from invasion and violence*.

The arrangements and CT structure remained in place until the end of the millennium when the Commonwealth began to take more responsibility at the expense of the States. Commonwealth policing was subsequently given greater responsibilities and roles in CT across Australia, particularly investigation aspects. In 1995 the *Criminal Code Act 1995* (Cth) was introduced and this contained a definition of terrorism that has basically remained unchanged. All State legislation where relevant applies the same definition.<sup>54</sup> The definition at section 100.1 reads:

**terrorist act** means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (3); and  
(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

(ii) intimidating the public or a section of the public.

Subsection (2) refers to actual death, harm, violence or threats while subsection (3) is where there is not violent intentions.

The “9/11” terrorist attacks on the USA in 2001 and Bali Bombing in 2002 motivated the Commonwealth to make counter-terrorism arrangements truly national and unambiguously a Commonwealth responsibility. The formalisation involved a national agreement in October 2002 (Gallop 2002) and all States referred a limited power to allow the enactment of the *Criminal Code Amendment (Terrorism) Act 2003* (Cth). All States passed legislation<sup>55</sup> to support and centralise

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<sup>54</sup> There is no equivalent terrorism legislation in State criminal law.

<sup>55</sup> State Government Terrorism Legislation

Jurisdiction	Legislation	Second Reading Speech	Commenced
NSW	Terrorism (Commonwealth Powers) Bill	Legislative Assembly, 13/11/02. P.6696.	13/12/2002

the Commonwealth's new responsibilities for policing terrorism matters "to enable the making of national laws" (Williams 2011, 1152). The Northern Territory and ACT did not have to pass laws "because the Commonwealth possesses plenary legislative power within those jurisdictions under s 122 of the Constitution" (Williams 2011, 1152). The referral stipulated the Act was not to be amended without consultation with the States. The transfer of criminal law powers concerning terrorism is significant as it was provided under the referral section 51(xxxvii) of the Constitution (Carney 2006a, 16) and from a Commonwealth policing perspective the AFP assumed a leadership role in this area of policing, particularly the investigation of terrorism activities, and a position previously left to the States with some Commonwealth involvement. The AFP and other Commonwealth law enforcement and security agencies were further empowered in 2004 and 2005 by additional legislation (Rimmer 2005), namely, *Anti-Terrorism Act 2004*, *Anti-Terrorism Act 2005* (Cth) and *Anti-Terrorism Act (No.2) 2005*, which amended and added additional powers to existing security and policing legislation, particularly the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth).

The introduction of specific Commonwealth criminal law concerning terrorism (Attorney-General 2012d) meant the reliance on State criminal law in these matters became redundant. "The states possess considerable legislative responsibility in the field of criminal law. Nevertheless, they decided against enacting their own comprehensive anti-terror law regimes" (Williams 2011, 1152). Interestingly, New South Wales and Victoria passed related legislation and these

QLD	Terrorism (Commonwealth Powers) Bill	Legislative Assembly, 3/12/02.	13/12/2002
SA	Terrorism (Commonwealth Powers) Bill	House of Assembly, 16/10/02. P. 1547 – 1548.	3/4/2003
TAS	Terrorism (Commonwealth Powers) Bill (No. 104)	House of Assembly, 28/11/02.	19/12/2002
VIC	Terrorism (Commonwealth Powers) Bill	House of Assembly, 23/4/03. P.1095 – 1099.	7/5/2003
WA	Terrorism (Commonwealth Powers) Bill 2002	Legislative Council, 28/11/02. P.3627b – 3629a.	3/5/2003

only concerned police powers i.e. stop, search and detain etc., while it is assumed the other jurisdictions were happy to rely on existing powers.<sup>56</sup>

The referral of criminal law powers for terrorism enabled Commonwealth policing to have primacy in this area. The 2002 Agreement between the respective governments on terrorism, at section 2.4 (d) stated that in the advent of a declared terrorist situation, regardless of the jurisdiction “the Commonwealth has responsibility in a declared national terrorist situation for determining policy and broad strategies in close consultation with affected States and territories” (Attorney-General 2002). Prior to the agreement Commonwealth pre-eminence was not clear cut.

It should be noted that there has been some disagreements between the Commonwealth and States over some aspects of terrorism laws. As agreed in 2002, the Commonwealth was to consult with the State and Territory governments over any changes to terrorism legislation. In 2005 some State and Territory governments complained publicly that the Commonwealth had not consulted with them in respect to some parts of additional terrorism legislation. It should be noted the legislation that followed provided the Commonwealth with less powers than it desired, due to this opposition. The opposition by the ACT Chief Minister was pivotal. “A ‘Draft-in-Confidence’ version of the Bill was made public on 14 October 2005 by Australian Capital Territory Chief Minister Jon Stanhope, thereby providing an extra opportunity for public debate, but also attracting an angry response from the Howard government” (Williams 2011, 1165). Also concerns by the Victorian and Queensland governments (ABC 2005) led to changes to the bill and lessened the powers provided for Commonwealth officers. The specific complaint by Premiers Bracks and Beattie aired on the 19 May 2005 ABC *Lateline* program. Their complaint was that additional powers for Commonwealth officers had been added to the new legislation, after a meeting of Premiers and Chief Ministers with the Prime Minister, where this issue had not been discussed or agreed upon.

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<sup>56</sup> *Terrorism (Police Powers) Act 2002 (NSW)* and *Terrorism (Community Protection) Act 2003 (Vic)*

To exemplify the change in policing in respect to terrorism, the AFP *Annual Report 2009–10* (AFP 2010, 58) provides a section concerning its Terrorism program and specified the outcomes from its work. The report identifies 100 per cent of its operations as preventative—resulting in 5 terrorism arrests, 10 terrorism convictions and nine terrorism offenders before the courts awaiting hearings. These raw statistics indicate the AFP provides a significant amount of staff and resources to this labour intensive investigation area. No other Australian police agency is involved with terrorism to this degree nor has it the legislative mandate to the extent Commonwealth agencies were granted at the behest of the States when they took the step of *referring* powers to the national government through the constitutional mechanism provided for such matters.

Spillover in this area has driven the change in Commonwealth policing at the expense of sub-national agencies and importantly, by consent and at the behest of State governments. Again, as in the case of organised crime, there was scant media reporting or political debate on the issue due to the consensual nature of the change. There was a lack of State resistance that is uncharacteristic in the normal course of Commonwealth-State relations, especially when an area of government service is taken over by the Commonwealth. An explanation for this State acceptance is not clear nor has it been the subject of other analysis. It is possible to speculate that such a high cost and high risk area of responsibility was allowed to be taken by the Commonwealth because the States lacked the financial resources and were risk-averse. Fundamentally, to resist the Commonwealth in this area would in political terms be detrimental as clearly the national and international nature of terrorism rests with the national government and its agencies.

It would appear to have been a classic spillover situation. In the communiqué from the Leaders Forum, mention was made of the 12 point plan to deal with terrorism and major organised crime and this included “providing the Commonwealth with a strategic role in terrorist situations” (Gallop 2002, 1). There are grounds to think that identifying *terrorism* as being *strategic* in reality meant the States took the opportunity to transfer real and potential policing costs and political risks associated with terrorism, to the Commonwealth under the guise of



*spillover*. At the end of the day the reality was the States by their actions were not losing anything apart from a potentially expensive and high risk area of law enforcement.

## **5.4 New Commonwealth Responsibilities**

There has been a significant increase in the scope of criminal offences and activity since the 1980s that fall within the ambit of the Commonwealth government's enumerated powers. The existing sub-national criminal law in many cases simply lacked jurisdiction on constitutional grounds and the Commonwealth has elected to enact new criminal legislation and take primary responsibility for enforcement. This is not to say the Commonwealth cannot empower State police agencies to investigate and enforce these matters as there are mechanisms in both the Constitution and through sub-constitutional processes for this to occur. Additionally, the Commonwealth government has shown that despite lacking jurisdiction in some policy areas, it has become involved where it perceived a national approach was required, like gun control when it intervened in this area of State responsibility, after the Port Arthur massacre in Tasmania.

Since 1980 there have been a number of specific areas concerning policing where the Commonwealth has opted to legislate and expand the scope of functions for Commonwealth policing. The areas that best exemplify the expansion of the scope of Commonwealth policing included *crimes against humanity*—including the exploitation of children and people smuggling; *cybercrime* (cyber meaning related to computers and computer networks); *firearms control*; *international policing*; and the recent *Northern Territory intervention*. These matters are considered individually.

### **5.4.1 Crimes Against Humanity**

A range of legislation was enacted by the Commonwealth Parliament after 1995, concerning the criminal code to satisfy the obligations required by the government in respect to a range of conventions and treaties it has ratified in the area of crimes against humanity. The authority for these laws is derived from the government's

external affairs power. The appropriate legislation is singularly national and from a policing perspective relies upon the AFP as the front-line investigation and enforcement agency. The range of relevant crimes present in the Commonwealth's criminal code includes:

3. Genocide and war crime-Division 268
4. Slavery and sexual servitude-Division 270
5. People trafficking-Division 271
6. Child sex offences outside Australia-Division 272

The AFP has responsibility for enforcement and investigation, while the ACC has also been given references to investigate specific crimes in this area (for specific time periods), for example, child sex offences and sexual servitude (prostitutes being brought into Australia by organised crime groups).

#### **5.4.2 Cybercrime**

Cybercrime has several aspects but can be regarded as two-dimensional—the first being crimes committed against a person's or organisation's computer or computer networks, while the second aspect is the use of this technology to commit or facilitate the commission of crimes, both established and new. Of the new crimes, the best known include hacking into computers for secret or commercially sensitive information; computer blackmail and ransom; cyber-fraud and forgery using stolen identities; distribution of child pornography; and cyber-bullying and stalking.

The Commonwealth Parliament passed legislation concerning cybercrime in 2001 (Martyn 2001), specifically the *Cybercrime Act 2001* (Cth) and this established amongst other things in a range of legislation, specific criminal offences in part 10.7, of the *Criminal Code Act 1995* (Cth). In the second reading speech by Commonwealth Attorney-General Daryl Williams, he stated the offences created by the Act were “based on the recommendations of the January 2001 Model Criminal Code” (Williams 2001, 28641). This meant the Act had been agreed to by both the Commonwealth and States, and the States could also pass the same legislation. Interestingly not all jurisdictions passed concurrent legislation and rely upon the Commonwealth for policing this area. The issue of jurisdiction was not contentious

and the Commonwealth was filling a significant gap in the criminal law where the States and Territories lacked legislation, and possibly jurisdiction as the Commonwealth enumerated power under section 51 (v) concerning communications covers all aspects of cybercrime.

The Commonwealth provided additional resources to the AFP to establish the High Tech Crime Centre to deal with crime in this area. The constitutional power for this area emanates from section 51 (v) 'postal, telegraphic, telephonic, and other like services'. An expansion of Commonwealth powers concerning cybercrime including those related to policing was proposed in April 2010 and conveyed to the States. The basis of the change was the intention of the Australian government, pursuant to its external affairs powers, to ratify the *Council of Europe Convention on Cyberspace*. This will clearly provide additional criminal law responsibilities for the Commonwealth and place additional responsibilities on Commonwealth policing. The commensurate legislation, *Cybercrime Legislation Amendment Act 2012* (Cth) was assented to on 12 September 2012.

#### **5.4.3 Firearms Control**

Firearm control is a State responsibility and the Commonwealth has no discernible powers in this area except in some of its Territories and in the trade (import) of ammunition, firearms and parts into Australia. Police agencies in each of the states and two self-governing territories are the responsible agency for firearms control and regulation, which has been a State government responsibility since Federation. However, the issue of firearms control as a national policy matter was initiated by the Commonwealth government in 1996 as a consequence of the Port Arthur massacre in Tasmania (28 April 1996). This focusing event (Birkland 1998; and Hollander and Patapan 2007), which involved the murder of 35 people and wounding of 21, caused national outrage. The overwhelming issue was the fact that citizens (like the gunman) in most States were able to own military pattern firearms. In response to the massacre the Prime Minister initiated action for the Commonwealth to intervene in this area of sub-national police responsibility. The Prime Minister called a special meeting of the APMC on 10 May 1996 with the aim

of developing a national firearms policy to decrease and restrict firearms in a uniform manner across Australia. A major problem had occurred and the States and Territories consented to the Commonwealth becoming an active participant in problem solving, regardless of lacking any obvious jurisdiction in this area of public policy.

As a result of the meeting of the Police Ministers, they agreed to a 10-point plan for the regulation of firearms. This became known as the *Nationwide Agreement on Firearms* (APMC 1996). The agreement included banning self-loading rifles, and self-loading and pump-action shotguns and a 12 month firearms amnesty and compensation scheme (the Gun Buy-back Scheme). The Gun Buy-back Scheme involved each State and Territory establishing and operating a system allowing gun owners and dealers to surrender newly-prohibited weapons in return for compensation. Arrangements were also made to compensate firearms dealers for loss of business relating to prohibited firearms.

The Commonwealth's role involved policy development and coordination for the implementation of the scheme and the provision of funds to the States under the *National Firearms Program Implementation Act 1996* (Cth). This Act was supported by both sides of the Commonwealth Parliament on 25/6/1998.<sup>57</sup> The Commonwealth funded both the administration of the scheme and the compensation payments made in relation to prohibited weapons. According to the 1997 Australian National Audit Office report on the Gun Buyback Scheme (Australian National Audit Office 1997), it secured the surrender of about 640,000 newly-prohibited firearms nationwide. The buy-back was funded as a result of the Commonwealth Parliament passing the *Medicare Levy Amendment Act 1996* (Cth) to raise the predicted cost of \$500 million through a one-off increase in the Medicare Levy.

The implementation of the new nation-wide firearms policy was made much easier by the fact Australia did not have any manufacturers of firearms for the domestic market. Thus, all firearms and spare parts had to be imported and the

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<sup>57</sup> See Hansard, Senate 25 June 1998, page 4083

Commonwealth's constitutional power involving commerce across the national border under section 51 (ii) allowed it to control the supply into States and Territories. The Commonwealth made it clear that it would use this power to prevent the States and Territories from circumventing the new policy.

What this exercise in problem solving and effective policy making in a specific policing area demonstrated, was the Commonwealth had the ability to take up new responsibilities outside the traditional constitutional boundaries, when it had the appropriate motivation and the consent of the sub-national governments.

#### **5.4.4 International Policing**

As part of the Commonwealth's *external affairs* responsibilities since the 1970s, it has provided police for international peace keeping sponsored by the United Nations Organisation (UN). This commitment grew substantially in the late 1990s with the East Timor intervention and has expanded to the provision of police for capacity building in the Asia and Pacific region. Motivating the capacity building initiative was the identification of international organised crime groups infiltrating the governments of a number of the small pacific island States and Papua New Guinea (PNG). The view of the Commonwealth government was these crime groups presented a substantial threat to political stability in these nations and this could result in regional instability affecting the interests of Australia (Boister 2004; McCusker 2006).

The AFP provided a substantial amount of staff for this aspect of police operations and made arrangements to supplement staffing shortfalls from State and Territory forces. The Commonwealth made full reimbursement of costs relating to secondment of those officers. This new policing responsibility is owned exclusively by the Commonwealth under the section 51(xxix) *external affairs* power.

There is another aspect to international policing that is simply the exchange of information and intelligence between Australian agencies and their international counterparts. Specifically, Interpol is the main international agency for this aspect of policing and the AFP is the Australian representative. Originally the Victoria Police was the initial Interpol link, then the Commonwealth Police and in 1979 the

AFP became the responsible agency. Additionally, other major police agencies in Asia, North America and Europe when dealing with Australian police agencies generally work through the AFP as the agency for communication and exchange of criminal information and intelligence. The AFP also provides international liaison officers representing Australian police agencies in many nations across the world.

Primarily Commonwealth policing is the conduit in all matters policing with the rest of the world. This responsibility has developed in tandem with globalisation and the internationalism of crime. Thus, constitutionally these new and expanding responsibilities pertaining to policing rest with Commonwealth policing.

#### ***5.4.5 Northern Territory Intervention***

In 2007 the *Northern Territory National Emergency Response Act 2007* (Cth) was enacted as a result of the problems identified in aboriginal communities in the Northern Territory, in respect to alcohol abuse, child sex offences, pornography and domestic and family violence (Magarey et al. 2007; Webb and Dow 2007). The Commonwealth took the unilateral responsibility to address the problems and policing was integral to the success of the initiative. Constitutionally the Commonwealth used its power under section 122 to intervene in the affairs of the Northern Territory. To implement this initiative a significant policing presence was required to ensure enforcement of the new laws in a number of aboriginal communities that were excised and placed under Commonwealth control.

The appropriation for policing in the first year included \$7.4M for AFP deployment and \$25.7M for the building of police stations and houses (Webb and Dow 2007, 4). The Act allowed the excision of specified areas of the NT so specific offences in those areas could be policed by members of the AFP and NT Police. Fundamentally, the Commonwealth intervened in the Northern Territory's affairs and compromised its perceived sovereignty (the reality of Territory status is the Commonwealth Parliament will always have sovereignty).

This intervention in the affairs of a self-governing Territory was exceptional and unusual and specifically involved the Commonwealth policing areas of the

Territory usually the responsibility of the NT Police Force and in turn the NT Government. The sovereignty of the local police and government was overridden by the Commonwealth. AFP officers were brought into the NT to police new Commonwealth laws and operate independently from the local police. The Commonwealth relied upon the plenary powers of section 122 of the Constitution to empower federal police. It would appear this application of this Commonwealth power could not occur in a State, but regardless it demonstrated how the national government can intervene in policing by unilaterally adding new responsibilities. It is considered such an exercise of Commonwealth power in policing would be problematic in a State. However, this is not to say it could not happen as the Commonwealth government has a history of expansion into traditional State government areas and in this instance the enumerated constitutional power concerning aboriginal people at section 51 (xxvi)—*laws for any race of people*, could in all possibility be applied.

## 5.5 Economies of Scale

*Economies of Scale* is a fundamental economic concept applicable and relevant to the operation of government and its agencies. In respect to policing since 1980, like all others areas of the public sector there has been a deliberate policy of improving performance in respect to the resources provided by government. Performance has been measured in quantitative terms of efficiency (productivity from inputs) and in qualitative terms of effectiveness (outcomes from programs).

As policing was structured after Federation with only State agencies, traditionally each agency operated independently and used stand-alone networks, systems and manual databases to operate. Most of these had a legislative basis in that they were authorised by law or their operation and accuracy was subject to judicial scrutiny. Critically, access to information and intelligence provided by the systems had to be highly secure and the contents accurate. The best example was the fingerprint records held by each agency and used for two specific and important evidentiary purposes. They can be used jointly to identify an offender from latent fingerprints left at a crime scene, and secondly establish from the individual's

fingerprints, their identity and past criminal record for the purposes of sentencing (or in a few cases evidence of the crime by establishing *similar acts*).

The volume of crime increased substantially across Australia from the 1970s and especially into the 1980s (Walker and Henderson 2003; Mukherjee and Dagger 1990) and one feature was criminal activity was operating across State and national borders. Thus the cost in terms of efficiency for operating individual jurisdictional agency systems in areas like criminal records and criminal intelligence became burdensome. Mark in his 1978 report pointed this out in his report where he advocated the Commonwealth should take a leading role in forensic science and identification (fingerprint identification and national database) for all the nation's police agencies (Mark 1978). The APMC, once formed, devoted a great deal of its energy to establishing a range of Common Police Services. The strategy developed around the idea of pooling resources and developing common nationwide systems and networks, thus providing only one system or network to exchange information in areas like fingerprint identification, criminal records, criminal intelligence and forensic identification, as opposed to eight. The minutes of the APMC's first eight meetings (NAA 2012f) demonstrate the extent of the interest in these national initiatives for policing. The recommendations of the array of royal commissions into drugs and organised crime in the late 1970s and early 1980s recognised the need for common national systems in many areas of policing.

Reforms in this area of policing had to be cognisant of the existing policing structure that operated within the federal architecture and was not therefore attuned to centralising systems and databases. However, there was a common approach to centralise as demonstrated by the establishment of the various common services. Thus Australian policing embraced the concept and implementation of national systems, which took the nomenclature of *National Common Police Services* (NCPS). Importantly, the fact that the Commonwealth has been playing a leading role in these developments and has been the principal financier, illustrates once again Commonwealth activism.



### **5.5.1 National Common Police Services**

Common services were established from 1980 in the areas of information systems; criminal intelligence; forensic science; and research and development. This experience illustrates how change was driven and the important role of the Commonwealth. The background to the developments have a history in federal politics in the 1970s and can be traced to Labor policy for policing undertaken by the Whitlam government (1972–75) and shortly after by the Fraser government (1975–1983). In 1973, Whitlam announced the policy to transform the Commonwealth Police into a FBI-like agency that would take responsibility for national systems like the fingerprint and criminal records database (Whitlam 1985). Later this policy was further supported by the findings of the 1976 Bennett report concerning the Commonwealth Police that recommended, *inter alia* “provision of national services to all police agencies including criminal records and information, intelligence on the movement of criminals and organised crime, planning and research and forensic science” (NAA 2012c, 18–20). The Cabinet, after considering the report, established an interdepartmental committee to report back on the Bennett recommendations including “(vii) discussion to be continued regarding the provision by the Commonwealth Police of common police services similar for example to the FBI and RCMP, e.g. Forensic Science Bureau and the National Planning and Research Unit” (NAA 2012c, 4).

Several years later the Mark review acknowledged Bennett’s recommendation concerning common police services and the first meetings of the APMC had a common theme of beginning the process to develop and establish common police services. The first four meetings of the APMC discussed the establishment and management of the inaugural common services and the resolutions (NAA 2012f) reflect this and are set out in the table below.

**Figure 5.2: Common Police Services Agenda Items at First Four APMC Meeting (NAA 2012f)**

<b>Common Service</b>	<b>APMC Meeting 1 @ Melbourne 29/8/80</b>	<b>APMC Meeting 2 @ Perth 5/6 February 1981</b>	<b>APMC Meeting 3 @ Sydney 29/5/1981</b>	<b>APMC Meeting 4 @ Hobart 20/11/1981</b>
<b>Criminal Intelligence</b>	Item 2: Resolved to establish ABCI	Item 1: Australian Bureau of Criminal Intelligence (ABCI) agreement between parties tabled. Commonwealth to meet all establishment and recurrent costs except seconded State police officers' salaries.	Item 2: First ABCI progress report	Item 5: ABCI policy guidelines and procedures papers provided and to be considered at next meeting
<b>Forensic Science</b>	Item 3(iv): Task Group to report of national forensic science structure and funding	Item 4: Naming (7) task force members and providing terms of reference to establish National Institute of Forensic Science (NIFS)	Item 3: Progress report by task force. Commonwealth offer to meet cost of Task Group study.	Item 6: Interim report to be tabled next meeting
<b>Information Databases &amp; Exchange</b>	Item 3(iii): Establishment deferred to meeting#2	Item 5: Agree in principle to locating national computer facility in NSW for National Exchange of Police Information (NEPI)	Item 1: Pilot scheme undertaken and costs met by Commonwealth. Cost sharing proposal to be provided at next meeting.	No item
<b>Research &amp; Development</b>	Item 3 (i): Poll members on establishing National Police Research Unit (NPRU)	Item 2: Agreed to establish NPRU	Item 5: Proposed cost sharing agreement of a third by Commonwealth and remainder by States and Territories. Draft intergovernmental agreement and recommended location to be tabled at next meeting.	Item1: Not all jurisdictions responded to draft agreement. Matter to be tabled next meeting.

The common variable to all of these services is the fact that the Commonwealth government provided the bulk of the establishment and infrastructure costs and also later the recurrent administration and operating costs. The reason for the Commonwealth funding can be attributed to States having limited revenue-raising capability as compared with the national government. From a political perspective the Commonwealth was able to obtain an influential and powerful role in the shaping of the new national agencies and in turn enhance the Commonwealth government's role in policing. Presumably, this Commonwealth role was due to perceived efficiencies to be gained by police as a result of working with the new police services. The direct effect was a significant change in the policing structure, with APMC looking to establish new common police services, national in focus and reliant upon Commonwealth government funding. It should be noted the State and Territory police agencies contributed staff and funding for most services but at the end of the day their existence relied primarily upon Commonwealth support and resources.

The common police services have evolved to where in 2010 they are an integral part of the national police structure. Recently the nomenclature—common police services—has disappeared with the services operating out of individual agencies and continuing to provide national services in the same areas of policing. The services are now also provided to New Zealand Police (the only police agency in that nation).

Individually there has been a shift from single common services to a more functional model clustering functions within an appropriate agency. It should be noted common police services represent the use of sub-constitutional processes and institutions to operate and now are part of the wider COAG institutions.

A brief description of the four main areas of common services demonstrates the centralising effect on policing in these policing areas.

#### **5.5.1.1 Criminal Intelligence**

The establishment of the Australian Bureau of Criminal Intelligence (ABCI) was the first attempt at creating a national agency staffed from all police agencies and

managed as a common police service with the APMC as the peak governance body (Norberry 2002, 5). As pointed out by Recommendation 34 of the Woodward Royal Commission: “A single joint Commonwealth-State intelligence system should be established” (Woodward 1979, 1984) and this recommendation was also supported in other similar reviews at the time. The APMC agreed to establish the ABCI at its second meeting after the Council’s formation. The ABCI was primarily funded by the Commonwealth with the police jurisdictions paying the salaries of any staff. These arrangements were set out in the ABCI agreement (NAA 2012f). In 2003 the Australian Crime Commission (ACC) took over the ABCI and continues to provide the national criminal intelligence database and the platform that it operates across Australia. A national agreement concerning the ACC provides the police ministers and commissioners with input into the agency’s service provision and operation. However, the Commonwealth government’s Attorney-General has the overall responsibility for the agency as it operates under Commonwealth legislation. Likewise, criminal intelligence is effectively operated and controlled by the Commonwealth government and no longer by the States after the closure of the ABCI.

The ACC manages the Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Network (ALEIN). ACID and ALEIN provide Commonwealth, State and Territory law enforcement and other regulatory authorities with a framework to securely store, retrieve, analyse and share criminal information and intelligence on a national and international basis (Norberry 2002).

#### **5.5.1.2 Forensic Science**

Forensic science is a general term for a range of scientific based investigation tools developed since the 1970s and now used extensively in criminal investigation because of the efficiency and objective nature of the evidence provided. “Over the last 15 years considerable advancements have been made in forensic science as an investigative tool for police officers in criminal cases. These advances have changed the way police services around the world have conducted criminal investigations from murder cases to computer crime” (Julian and Kelty 2010, 11). It is not only DNA identification which is the best known *forensic* tool that has developed

significantly but also a range of other tools for forensic investigation in the areas of ballistics, textile identification, tool marks and toxicology. The development of forensic science in policing is specifically linked to the developments in technology involving electronics and computing.

The importance of forensic science in policing is three fold: it speeds up investigations by helping to both identify and discount suspects; it decreases the number of investigators required in some cases; and provides objective scientific evidence that speaks for itself and independently corroborates evidence provided by witnesses. Forensic science has increased both the efficiency and effectiveness of policing in Australia; however, it comes at a cost and for the smaller agencies in the 1970s and 1980s the cost was prohibitive. Thus, the sharing of technology and providing uniform national standards was critical.

The Australian approach has been to establish a national agency to establish standards and maintain accreditation of the respective forensic laboratories and standards for the workforce in the field. The development of training courses and national accreditation was also another responsibility for the agency.

The National Institute of Forensic Science (NIFS) was established in 1991 as a common police service under an Agreement signed off by the members of the APMC. The establishment of NIFS lagged behind the 1982 report by a task force set up by the APMC to report on “forensic science matters of common interest” (NAA 2012d, 5). NIFS commenced operations in February 1992 and was located in Melbourne, and was ultimately accountable like the other common police services to the APMC.

In 2008 NIFS governance arrangements changed as there was agreement by the Ministerial Council of Police and Emergency Management-Police (MCPEMP), previously known as APMC, in which NIFS would become a Directorate in the newly formed Australia New Zealand Policing Advisory Agency (ANZPAA).

Clearly, reforms in this area have been driven by the need to achieve the most economic outcomes possible.

### **5.5.1.3 Criminal Information**

The first area of policing attracting formal cooperation between the States was with fingerprints. In 1941 the New South Wales Police Fingerprint Bureau commenced operations as the Central Fingerprint Bureau for the nation with each agency contributing financially towards its cost. This was the starting point for national police databases and the system of exchange of the information. The Central Fingerprint Bureau operated as the database manager until 1990 when the National Exchange of Police Information (NEPI), a new common police service, was established. The fingerprint database was developed into the National Automated Fingerprint Identification System (NAFIS) in 1987. This nationwide fingerprint identification system was at the time the only National computerised system of its type in the world. In 2001 the NAFIS System was replaced by the new SAGEM Morpho System operated by CrimTrac.

NEPI existed until CrimTrac (CRIMTRAC 2012) was established in 2000. It is an executive agency within the Commonwealth Attorney-General's Portfolio. It was established under an Inter-Governmental Agreement (IGA) between the Commonwealth and each of Australia's police agencies. The IGA underpins CrimTrac's mandate to lead the delivery of national information-sharing services for law enforcement agencies. In 2006, CrimTrac and all State and Territory police commissioners entered into a partnership Memorandum of Understanding, which supports the IGA. The CrimTrac website comments "The success CrimTrac has achieved during this time is an excellent example of cooperative federalism, with the Commonwealth, States and territories working together to prevent, detect and reduce crime" (CRIMTRAC 2012).

CrimTrac staff are employed as Commonwealth public servants and all intellectual property is vested and owned by the Commonwealth government. The agency's Board is constructed of a Commonwealth Attorney-General's representative and the police commissioners who report to the Standing Council on Police and Emergency Management (SCPEM). In 2009–10, the agency employed 198 staff and it cost \$52M to operate (CRIMTRAC 2010). Again this centralised service has been driven by the need for economy and the Commonwealth has been

the primary developer. Interestingly, the agency now makes a profit from its operations due to charging a fee for providing *national police certificates*, that many occupations require employees to obtain as a prerequisite for employment.

#### **5.5.1.4 Research and Development**

The issue of a police-centric research and development agency servicing the needs of all Australian police agencies was on the agenda of the first meeting of the APMC in 1980. Subsequently at the sixth meeting in December 1982 the establishment of the National Police Research Unit (NPRU) was approved as another common police service. The NPRU was located at Adelaide and existed until most of its roles were subsumed by ANZPAA when it was disestablished in 2007.

### **5.6 Federalism and Driving Change**

The current policing model has primarily been achieved by changes and reforms driven by the Commonwealth that began in the 1970s. The Commonwealth has been the most influential government in Australian for policing and this outcome has flown under the radar and attracted little or no attention academically, in the media or by the parliaments across the nation.

The drivers of change have been identified but there were also policy processes and instruments that facilitated the acceptance of the problem solving drivers that must be recognised. Commonwealth influence in public policy concerning policing began by its own initiative in 1980 by forming the APMC as the national forum and policy making body for policing. The importance of this to the drivers is illustrated by considering the resolutions of the first eight APMC meetings (NAA 2012f)—where the States wanted something in return for allowing the Commonwealth to actively participate and at times implement its policies on policing. The States needed funding for the significant reforms and technological developments that would spin off from the development of common services. In most cases Commonwealth funding facilitated the driving of change in these areas that primarily benefited the Commonwealth's influence and status in policing. Figure 5.3 illustrates the requests made on the Commonwealth government by the

State and Territory Police Ministers at the first eight meetings of the APMC for funding of new initiatives. The Commonwealth was forthcoming with funding to develop the common police services and the success of these programs was due primarily to Commonwealth funding. Clearly, this was a case of the Commonwealth driving change using sub-constitutional processes, reliant on the cooperation of the States and Territories to solve critical political problems faced by governments across the federation. The States however were not impotent and forced to accept change, they clearly used their power to negotiate to achieve their desired outcomes. There was a *quid-pro-quo*, and the States had the ability to negotiate outcomes from the Commonwealth, which were to their advantage.



**Figure 5.3: APMC Requests for Commonwealth Assistance at first eight Meetings 1980–1983 (NAA 2012f)**

<b>APMC Meeting</b>	<b>APMC Secretariat</b>	<b>Criminal Intelligence</b>	<b>Information Databases</b>	<b>Forensic Science</b>	<b>Research &amp; Development</b>	<b>Reviews of Special Issues</b>
<b>No. 1: 29/8/1980</b>	Commonwealth (Cth) fund and operate Secretariat					
<b>No. 2: 5/2/1981</b>		ABCI Agreement: Commonwealth fund all establishment and recurrent costs				
<b>No. 3: 29/5/1981</b>			Commonwealth fund NEPI establishment	Commonwealth fund taskforce study to establish NIFS	Commonwealth to pay 1/3 of NPRU costs	
<b>No. 4: 20/11/1981</b>						
<b>No. 5: 21/5/1982</b>						Commonwealth fund studies on national statistics for violent crime, white-collar and computer crime

<b>APMC Meeting</b>	<b>APMC Secretariat</b>	<b>Criminal Intelligence</b>	<b>Information Databases</b>	<b>Forensic Science</b>	<b>Research &amp; Development</b>	<b>Reviews of Special Issues</b>
<b>No. 6: 19/11/1982</b>				Commonwealth pay half NIFS recurrent costs		
<b>NO. 7: 27/5/1983</b>	Commonwealth fund expansion of Secretariat in order to provide Common Police Service reports to APMC					
<b>No. 8: 25/11/1983</b>		ABCI expansion funded by Commonwealth		Commonwealth pay all NIFS costs		

Problem solving and cooperation have been shown in the previous chapter on Australian federalism to be two of the key characteristics for change and obviously have played a role in the success of these drivers to change the structure of policing. There is clearly a link to how federalism has operated in recent times and what has occurred in the case of policing, which has been evidenced in this chapter. The four key ingredients that characterise the change in policing—problems identified and needing urgent attention; States cooperating with the Commonwealth in problem solving; centralising some services; sharing or allocating responsibilities to one level—have all been evidenced in the discussion on drivers.

## 5.7 Conclusion

The discussion on the drivers described the key events for Commonwealth policing after the AFP was formed. This demonstrated how the usual resistance to Commonwealth intrusions into a traditional State responsibility and related powers were absent and in fact the States were supportive and fully cooperated with the Commonwealth. It could be argued responsibility was to be concurrent in the spirit of *cooperative federalism*, but the reality is that in many of these areas that relate to spillovers and new responsibilities, the Commonwealth has become preeminent.

The additional role for the Commonwealth is evidenced by the fact that most sub-national governments have not passed concurrent criminal legislation in these areas and their police agencies do not operate independently of Commonwealth agencies in any local investigations that relate to these crimes. It must also be recognised that many new crimes have emerged for which the Commonwealth has the enumerated powers to deal with and for which the States lack jurisdiction. The other driver of change considered—economies of scale—demonstrated that Commonwealth fiscal power is an instrument it has used to make inroads into policing and assume an influential role in this traditionally State controlled domain.

It is clear when considering the drivers of change that the experience of policing differs substantially to most other areas of government service delivery. As noted in Chapter Three, in other State areas of responsibility like education and health, the Commonwealth's driving of change and reform has been a constant source of conflict with the States, while policing has been characterised by State cooperation and consent. The other key difference is the fact that the Commonwealth has driven change by directly entering policing and becoming operationally involved by delivering services in its own right—it operates its own police agencies.

The process of change for Australian policing from a federalism perspective since 1980 is characterised by the cooperation of the States and Territories and lacks any of the usual conflict expected for such a significant change to the division of powers and increased centralisation. As well, in a number of areas there is a sharing of responsibilities. The fact that the Commonwealth was the substantive driver of change has been detailed, but the reason for State support has not been a matter widely discussed or researched. However, in the case of uniform firearms laws; establishment of the ACC; APMC policy making; and the establishment and operation of Common Police Services, the States have negotiated favourable outcomes. The outcomes achieved from these four cases are: buy-back of firearms and all administrative costs paid by the Commonwealth; ACC Board constituted by all the State and Territory police commissioners; Chair of APMC now and in its latest manifestation, changes annually between all jurisdictions (Commonwealth originally proposed it be the permanent Chair); and the common services were only established if the Commonwealth was principle financier.

Why the States and Territories have supported change, regardless of effectively diminishing their policing scope in some areas, can only be speculated from the facts shown by the matters explored so far. The States and Territories are faced with VFI and are cash-strapped and they understand that addressing the new and emerging crime problems is an expensive business. The use of Commonwealth funded new technologies and central databases and communication systems makes police agencies

more effective and provides at the same time significant saving because of economies of scale. With this in mind and knowing the Commonwealth has greater revenue capacity, leaving the problem solving to the Commonwealth, has benefits, regardless of losing sovereignty over some aspects of policing. The fact that the leaders at the 2002 *Summit* recognised the *strategic* nature of terrorism and organised crime and made these areas of crime a Commonwealth responsibility, is persuasive evidence of the recognition of the spillover of these matters that are of *high-risk* in the political arena.

The ultimate result of the changes driven by the Commonwealth has been nationally integrated policing and it has been argued this entailed greater centralisation in some areas of policing, while sub-national agencies retained most of their existing responsibilities. This resulted in a new national policing structure where the Commonwealth plays a significant role and operates as an equal with the other agencies.

When all of the issues surrounding change are added up, it is clear from the police experience that how federalism operated over time played a role in the change to policing. Clearly, cooperation between the federal partners, using both sub-constitutional and constitutional mechanisms, played an important role. At times the Commonwealth also took a forceful role as was the case following the Port Arthur massacre. The Commonwealth has also used the APMC to gain influence, which was a tactic identified previously in the case of the national education forum. The operation of federalism has played a major role in facilitating change.

Why change occurred and what drove it has been explained in terms of the three specific types of drivers. In considering these explanations, they centred on the need to solve confronting crime problems by governments. In this case, problem solving as a general explanation fits with the conventional view on this aspect of federalism discussed in Chapter Three.

Before considering the matter of the changes to Australian policing and the development of the new structure, it is appropriate to consider the Australian

experience in comparison with some other like federal nations, before concluding and addressing the primary research questions. Considering the experience of other nations may help explain why Australian policing has changed and may also corroborate the findings that have become evident in the previous chapters. Importantly, the opportunity is provided to view the role of federalism in policing in these countries, and the extent of its influence over policing. Therefore, an international comparison of Australian policing with four federal nations, that all share a range of common political and social characteristics, is the subject of the next and penultimate chapter.

## **CHAPTER SIX: INTERNATIONAL COMPARISON OF POLICING**

### **6.1 Introduction**

This chapter uses an international comparison to test some findings from the previous chapters and put the Australian experience into perspective. The predominant matter for the comparison is the proposition outlined in Chapter One: *centralisation of policing is a trend that other western democratic federations have also experienced, regardless of decentralised policing structures and entrenched anti-centralisation political ideologies* (Chapter One, section 1.3). The previous chapters demonstrate that the main reason why policing in Australia experienced a centripetal shift is "the globalisation of crime and insecurity: complex crimes and conspiracies spanning numerous countries are said to require extensive international police collaboration" (Bowling and Sheptycki 2012, 1). This aspect—internationalism of crime—means crime of this nature is generally left to the national government to be the first responder, and so by default it falls to the national police agency or agencies. Other internal political factors are also at work to increase the role of national governments in policing. Much of this can be attributed to changing federalism, which increases centralisation and in the case of Australia has encouraged the national integration of policing.

Testing the *centralisation* proposition is done by using an orthodox methodology of identifying the basic elements of the policing model in each of the four federal nations selected—Canada, Germany, Switzerland and USA. The primary consideration is how policing operates within the political system and government structure, then exploring the issue of increased federal government involvement. The nations selected share a range of common elements in their political, legal and social systems that make a comparison for policing plausible. Clearly, no two nations will be identical, but grouping Canada, Germany, Switzerland and USA with Australia is practicable and has been used in other areas of government services like education and health.

The chapter begins by identifying each of the nations used in the comparison then considers each nation separately. Each nation is described in terms of the fundamental constitutional and political structures and then how policing operates within the political and government framework. The practical operation of policing within the framework of government is the key issue in considering the extent of federal involvement in policing—the question asked is to what extent has federal involvement increased. Importantly, this section considers the extent that crime has transcended from a local problem to one that requires a national approach. As Casey summed up the recent international developments in policing and the impact they had: “the average police officer’s operating environment passes much wider horizons: crime threats are increasingly global and most officers find themselves routinely dealing with international and transnational issues” (Casey 2010, xiii).

This leads to a conclusion concerning these nations in respect to the key question of the change to policing—was it evidenced by increased centralisation and changed policing structures? This importantly identifies the extent of change driven by federalism in these nations and leads to the final consideration of whether the experience of these nations supports the findings concerning the Australian experience.

## **6.2 Comparative Nations**

The four nations used for the comparison are drawn from a group of Western federations that are similar to Australia in respect to the primary political setting of federalism. Additionally, there are several important common characteristics required for their selection that includes the nation having an effective democratic political system, an independent judiciary and a similar social environment. As well all of the nations are members of the same major international institutions (UN, World Bank, IMF, Interpol, etc.) and are intertwined by means of international treaties and



agreements concerning policing, as well as other related political alliances and institutions.

It should be noted there are some fundamental differences between the four nations in two important matters. In the cornerstone matter of division of powers between national and sub-national governments: Canada and Switzerland are classified as decentralised while Germany and the US are considered centralised. As to the actual operation of many government services like policing, the federal government in the US and Canada take a leading role in service provision, while Germany and Switzerland generally leave the administration and operation of federal services to sub-national government. Also in support of the choice of these four nations is the fact that many Australian comparative works relating to politics, public administration and public policy also use all or some of these nations as a matter of course for comparative purposes.

Before considering the nations individually, Figure 6.1 provides a comparison of the four nations with Australia in respect to the fundamental national dimensions and the rudimentary government structures of federal government.

**Figure 6.1: Comparison of Primary Statistics for Australia, Canada, Germany, Switzerland and USA**

	Australia	Canada	Germany	Switzerland	USA
<b>Population (million)</b>	22.6	34.3	82.1	7.7	313
<b>Area (Sq. km)</b>	7.7 million	9.9 million	357,000	41,284	9.8 million
<b>States/Provinces/Lander/Canton</b>	6	10	16	26	50 + District of Columbia
<b>Territories (self-governing)</b>	2 <sup>58</sup>	3	none	none	6
<b>Local Governments (approximately)</b>	562 (ALGA)	3,700	15,000	3,000	39,000 (US Census Bureau)
<b>Gross National Income per capita (\$US), 2010<sup>59</sup></b>	37,580	38,400	38,410	51,600	47,220

<sup>58</sup> The Northern Territory and Australian Capital Territory are self-governing territories and politically operate like the Australian States

<sup>59</sup> World Bank Gross National Income, per capital, based on purchasing power parity (PPP), located at <http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD>

### 6.3 Canada

Canada like Australia has a history of British colonisation and was constructed from a number of British colonies using a federal model for the political system. Many of the original colonies have been restructured like the colony of Canada being deconstructed into the provinces of Ontario and Quebec, and many new provinces have developed from territories. Currently the structure of government consists of one national government, ten provinces, three territories and approximately 3700 local governments of varying sizes.

The arrangement for government is contained in the Constitution and only recognises two levels of government, national and provincial. Like Australia, there is provision for self-government of territories as is the case with the Yukon Territory. The governance of indigenous communities is multi-faceted and can fall within the jurisdiction of federal or provincial government or both for services.

Policing is predominantly a government-operated service and primarily a provincial responsibility that is generally devolved by provinces to the local government level. Constitutionally, Canada is like Australia as there are no enumerated powers for the Federal government in respect to policing. The Constitution is silent on the specific topic but in the chapter on enumerated powers for the provinces, under the heading of the *Administration of Justice*, this power is considered to render policing a provincial (State) responsibility (Robertson 2012, 345). Unlike Australia, where all residual powers not enumerated in the Constitution fall to the States by default, Canada has the opposite predisposition so that generally residual matters are considered to be in the jurisdiction of the Federal government (Fenna 2007a, 180). Interestingly, Canada is generally regarded as a decentralised federation, akin to Switzerland in many respects (Fenna 2007a, 188) as opposed to Australia being highly centralised.

At Federation in 1867 there was no provision for federal policing in the Constitution, but shortly after there was a need for policing in the newly acquired

western territories. This was the start of federal policing and in 1873 the North West Mounted Police (NWMP)<sup>60</sup> was established by the federal government to police the new territory. From there the agency, renamed the Royal Canadian Mounted Police (RCMP) in 1920, has progressed to its iconic position as the largest police agency in the nation and one of the most recognised police agencies in the world.

In 1905 the NWMP was first contracted by a province to supply police services and that trend continued to the present where only two large provinces, Ontario and Quebec, provide their own police agency. Currently, the other eight provinces and all the territories and many indigenous communities are policed by the RCMP. However, all major cities in Canada have their own police forces and these can be traced to the original establishment of the cities. A large percentage of policing is represented by these city agencies and RCMP representation is not commonly visible in these population centres.

By contrast with Australia and the United States, responsibility for the criminal law in Canada was allocated to the national government. Thus, the federal parliament is the sole source of the primary criminal law. This centralises and in many respects takes away from the provinces control of what the police do in their jurisdiction involving the criminal law enforcement function. Additionally, the 1982 Canadian *Charter of Rights and Freedoms* centralises criminal law procedures and policy and places it squarely in the hands of the national government. In every police investigation the procedure must comply with this federal law regardless of the agency's jurisdictional roots. It would appear the Canadian policing model in many respects is the product of the Constitution power of the federal government and this should be considered in more detail.

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<sup>60</sup> Renamed the Royal Canadian Mounted Police (RCMP) in 1920

### **6.3.1 Constitutional Arrangements and Policing**

Constitutionally, policing is a provincial responsibility located under the heading of *Administration of Justice in the Province*.<sup>61</sup> In the case of Territories where there was no sub-national government, by default the responsibility falls to the federal government unless there is *responsible government* legislation in place, like the Yukon Territory. Included in the enumerated powers of provincial constitutions, along with provisions of Territorial self-government Acts is the power for the respective governments to provide policing services within their jurisdiction. This resulted in each provincial parliament<sup>62</sup> along with the Yukon,<sup>63</sup> enacting police legislation establishing police agencies, providing for their governance and functions along with detailing the powers of police officers employed by the agency. Police agencies are statutory authorities and their governance structure (generally titled commissions) is detailed in the respective acts.

The provincial Acts generally detail the obligation placed on local governments like cities, municipalities and towns to provide policing services or to contract for such services or by default where the municipality is small, allow the provincial government to provide the service (John Howard Society of Alberta 1997, 3–4; Statistics Canada 2010, 9–10; Robertson 2012, 345). There are provisions in the legislation to allow the RCMP or other police agencies such as provincial police or adjoining municipal agency, to provide the policing service at either provincial or local level (Robertson 2012, 345). When the option is taken, a formal contract is entered into by the parties with a specific cost sharing formula.

The RCMP service is provided at a fixed cost to the user for extensive contracted periods, at least 20 years. Police Services Agreements are based on cost share. Provinces and territories pay

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<sup>61</sup> *The Constitution Act 1867*: section 92 (14)

<sup>62</sup> *Alberta Police Act*, **RSA 2011**, c P.17; *Police Act*, **RSBC 2011**, c 367; *Provincial Police Act*, **CCSM 2011**, c. P.150; *Police Act*, **RSNB 2011**, c. P. 13.1; *Royal Newfoundland Constabulary Act*, **RSONL 2011**, *Police Act*, **RSPEI 2006**, c. 16; *Police Act*, **RSNS 2011**, c. 31; *Police Service Act*, **RSO 1990**, c. P.15 *Police Act*, **RSQ 2011**, c. P 13.1; *Police Act*, **RSS 2011**, c. P.15.01.

<sup>63</sup> *Auxiliary Police Act*, **RSY 2002**, c.14.

70% of RCMP costs and the federal government pays 30%. Municipal agreements are based on a number of different cost share formulas, which are dependent on population size, and when a municipality signed its first policing agreement with the RCMP (RCMP 2013a).

An example is the province of Alberta renewed its contract in 1992 with the RCMP for another 20 years (to 2012) and agreed to pay annually 70 percent of the service provision costs (Cooper and Koop 2003, 6–18). (The contract was renewed in 2011 for period 2012–2032)

All areas of crime that are the subject of federal legislation and national in character are the responsibility of the RCMP. Examples include organised crime, illicit drug manufacture, drug importation and trafficking, terrorism, crimes against humanity including human trafficking and technology based cybercrime and money-laundering and Internet scams (Statistics Canada 2010, 9). These areas of crime developed after Federation and the federal government chose in the case of these matters to apply its residual powers and make enforcement the responsibility of the RCMP. The internationalism of crime since the 1970s has affected Canada and the RCMP has taken the lead role in combating international organised crime.

On the RCMP website, *Serious and Organized Crime* page—the impact of organised crime and the concern for this type of crime is expressed and the link to international influences is recognised:

Organized crime affects the daily lives of Canadians.....Globalization and rapid advances in technology have contributed to the expansion and internationalization of organized crime activities; Canadians can easily fall victim to organized crime groups operating outside of our borders, (identity theft, internet, e-mail scams, phishing, etc.), making it a global problem that cannot be fought solely within our borders. ....The violence and corrupting effect of organized crime groups are mainstays of primary activities, which greatly affect every Canadian's right to safety and security (RCMP 2013c).

The structure of policing and the arrangements for policing in Canada have developed in a way where the federal government is the largest individual provider of policing services regardless of the constitutional responsibilities being primarily a

provincial one. In 2010 the RCMP provided policing services to eight provinces, three territories, 190 municipalities, 184 aboriginal communities and three international airports (CPIC 2010). The RCMP operates under federal legislation<sup>64</sup> and has a Commissioner appointed by the federal government “who under the direction of the Minister has the control and management of the Force and all matters connected therewith” (*s. 5(1) RCMP Act 1985*). The Minister for Public Safety is the responsible minister.

Policing in Canada therefore has three tiers of government providers: national; provincial; and local (inclusive of cities and municipalities). In total according to the National Directory of police agencies (CPIC 2010) there are 460 police agencies, with the RCMP being the largest and providing over 50 per cent of policing services for the nation (CPIC 2010).

What is equally, if not more, significant from a comparative perspective is the role of local government. Cities and municipalities according to provincial legislation are required to provide police services unless they are a very small community. This results in the substantial number of municipal police agencies and importantly all the major cities, including the national capital Ottawa, provide their own police agencies. Interestingly, like Australia and the USA, local government is not recognised in the federal Constitution but is recognised in the provincial constitutions.

### **6.3.2 Policing in Practice**

Although the federal government does not have primary constitutional responsibility for policing, the national police agency is the largest single police service provider in the country and operates in all jurisdictions to provide services of varying degrees. The function of police agencies in all jurisdictions, regardless of their ownership, has a base which entails the maintenance of law and order akin to the fundamental role of Australia’s State and Territory police agencies. The respective police legislation like British Columbia’s *Police Act, RSBC 1996, Chapter 367*, tasks the police under section 7

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<sup>64</sup> *Royal Canadian Mounted Police Act RSC 1985, c R-10*

with “duties and functions respecting the preservation of peace, the prevention of crime and offences against the law and the administration of justice”. Similarly, the other provincial Acts concerning policing replicate these words in respect to the general police role.

The actual practice in Canada is generally different from the theoretical arrangements of policing being a sub-national responsibility and this reality is the nub of criticism concerning the role of the federal government in policing. The provision of police services outside its prime national jurisdiction by the RCMP according to some critics is detrimental to Provinces and local communities (Cooper and Koop 2003, 10–11; Macleod 1994, 188–189; Beare and Murray 2007, 113–114). The RCMP is a national organisation and the main criticism is it cannot provide a service sensitive to local needs and consistent with community expectations. This lack of local control is the price local jurisdictions pay when they contract the RCMP to provide local policing services. The response to this criticism is the respective Acts provide checks and balances to control the contractors and the functions they undertake. It would appear this is the case, and the RCMP must take notice of local input; however, the extent that they act upon the feedback is obviously the key issue.

Another matter concerning policing is what actually occurs in respect to policy, as the independent police agencies (agencies not contracted from RCMP) must be cognisant of federal policy due to conditions put on federal funding, which independent agencies rely upon in many areas. Agencies that exist in their own right in Canada have access to federal funds under a range of policing grants and funds like the Police Officer Recruitment Fund that began in 2008 and has cost \$400M to date. The other main areas of funding are in Aboriginal policing and anti-gangs squads. The funding is conditional on achieving performance goals and standards in most cases and effectively places federal controls in the functions undertaken by police agencies in these areas.

The governance arrangements for each level of police agency are set out in the provincial police legislation enabling the establishment of statutory authorities within provinces and detailing governance structures. The structures include management and oversight by provincial ministers along with commissions, committees, boards and panels, and governance arrangements permitting input by independent and local community representatives (Robertson 2012, 349). Apart from ministerial governance provisions, those concerning other representative bodies have never been included in Australian police legislation or are a feature of agency governance.

In the case of provinces not contracting to the RCMP (Ontario and Quebec), the governance of the provincial force is undertaken by a police commission established to represent the community. The aim of the arrangements is to avoid the perception of direct political control and allow local input with the aim of making the police more attuned to community needs. In the case of independent municipal and city police departments, many have established police boards to oversee the operation of the police but many local police agencies are governed directly by municipal councils or their committees.

When considering governance it is not a straightforward and linear matter in the agencies that contract services in from other agencies, in particular when contracting the RCMP. As noted, the RCMP contracts to provinces and municipalities and the degree of local control by definition cannot be fully local. As argued in a Fraser Institute discussion paper on the perceived shortcomings of contracting policing out to the RCMP in Alberta: “the province could supply better police service because the provincial government is more responsive to local needs, local culture, and local context than is the federal government” (Cooper and Koop 2003, 6). The RCMP is a federal organisation and it operates a uniform service across the nation. Thus, in the case of governance for issues like personnel, equipment, operating practices and procedures these cannot be tailored to each province or municipality.



The RCMP also provides national and uniform services to support police agencies across the nation. National information exchange, criminal records and intelligence, communications, forensic science services and training are provided by the RCMP.

### **6.3.3 Centralisation and Canadian Policing**

Federal policing has grown significantly since *Confederation* in 1867 irrespective of the fact so many sub-national governments contract the RCMP for local services. With residual matters falling to the national government under the constitution, the RCMP has been tasked with many crime matters that have developed since the 19<sup>th</sup> century. Examples of new policing functions include crimes against humanity, cybercrime, drug trafficking, national security threats inclusive of those derived from terrorism and organised crime (Murphy 2007 454). The federal government has developed a policy to expand its role in policing since the 1960s by the RCMP providing seven national services for all police agencies across the nation in areas such as criminal records, criminal intelligence, forensic science and identification, training and research (RCMP 2013b).

Like Australia since the 1970s, globalisation and increased mobility of criminals and the volume of crime at all levels committed across local, provincial and national borders have increased significantly (Ferguson 2005, 272–274). The increased volume of crime appears to be a common phenomenon for most Western nations and has been identified as one of the main outcomes of the unprecedented and rapid social change that took place since the 1960s. The fact of globalisation over this period was also a critical factor that affected Canadian policing at all levels. Importantly, the Constitution provided that the emerging international related policing matters could rest with the national government and this has facilitated this growth. Additionally, the provision of a large range of policing services on a national basis has also placed federal policing in Canada in a powerful position to influence policy and practices at the

lesser levels of policing. Overall federal policing has grown but the critical question is has this translated into increased centralisation of policing?

The extent of the centralisation of policing in Canada is clearly to a lesser degree than Australia. At a first glance Canadian policing appears to have become more centralised in recent times but in reality there has only been incremental change, much less than Australia. The fact of *contracting-in* police services from the national police agency, RCMP, in some areas of policing, injects a variable that makes it difficult to make comparisons with the other nations. More RCMP police in the field does not necessarily translate into more centralisation as the main areas for policing—the cities maintain their own police forces. The Canadian system ensures police agencies that contract-in the RCMP are accountable to formal governing bodies and to standards set by provincial legislation and policy. Overall, this limits the influence of federal policing policy and control but at the end of the day the use of the RCMP by communities and provinces has a centralising effect.

The policing model emerging from Canada provides the federal government with a strong position of influence on policing across the nation. In many instances—the eight provinces that contract in the RCMP—this degrades the powers of the sub-national governments and has a centralising effect on policing. It appears the main reason for this situation at provincial and local government level is the fundamental issue of cost as the government subsidises policing when it is provided by the RCMP to the point that cost wins out over independence. Additionally, critical national support services in all areas of policing are provided by federal policing—giving additional cost savings for local policing and in turn the respective provincial and local government.

Regardless of this trend towards centralised control in some provincial and local government areas, in comparison with Australia the communities being policed have greater input into the governance and functions of local police for provision is made in all police statutes for this to a varying degree. No such provisions exist for Australia's eight agencies in contrast with the Canadian model that embraces and mandates the

requirement for community and local input for all levels of policing. The extent of centralisation is therefore diluted because of the governance powers provided to the community being policed.

The federal government on the face of it provides a more centralised police service than Australia and uses the primary mechanism of fiscal power and the uniform criminal law to directly influence sub-national governments and in turn the policing services it provides. It is also helped by the constitution's construction where residual matters fall to the federal government. Like Australia of recent times there has been a centralisation trend in policing and it is expected to continue (Smith 1994, 187–191; Cooper and Koop 2003, 6); however in reality it has been less than the Australia experience.

The recent experience of policing in Canada, like Australia, is primarily the product of political and social development and it is difficult to compare experiences due to the fundamental difference in policing structures and intergovernmental arrangements. It can be concluded that the increased volume of international crime is expanding (RCMP2013c) and the federal police agency's role in policing remains well in check due to the decentralised nature of policing, and in government as a whole (Fenna 2012b, 583). It should also be noted that the nature of policing is underpinned by a decentralised political culture that permeates areas like policing.

When all the factors are taken into account concerning the recent Canadian policing experience, it only supports one conclusion concerning Australian policing—that international influences and in particular the growth of international crime have been the main drivers influencing centralisation of policing. Regardless, Canadian policing continues to be recognised as decentralised.

## **6.4 Germany**

Germany is the newest of the federations covered here, having undergone dramatic changes to the political model during the twentieth century. The current German

federation was established with the reunification of East and West Germany in 1990, while the current policing model is derived from the post-war West German model. The *Grundgesetz* (Constitution or 'Basic Law') was adopted in 1949 and without doubt from a policing perspective differs substantially from Australia and many other nations. Primarily, this is because it contains enumerated policing powers and emphasises the decentralising of policing responsibilities and constrains federal policing functions (Ritsert and Pekar 2009, 18; Frevel and Kuschewski 2009, 52). Overall, when German federalism is considered in respect to centralisation, it has been classified by some commentators, as being similar to Australia and a "centralized federation" (Braun 2011, 35) and grouped with Australia in respect to being centralised (Fenna 2012b, 588).

This approach to policing in the Constitution was shaped by a number of events and experiences including the activities of the centralised police force under the Nazis; the post-war occupation that split the country into East and West Germany; and finally the 1990 reunification. These events and experiences were influential on the political architecture of the German federation and in turn the development of policing. One significant feature in the 1949 Constitution was the specific restriction of federal policing, as prior centralisation of policing had been used as an effective tool to control political dissent in the Nazi and East German States.

Since 1990 there have been significant changes for policing accompanied by ongoing changes to Bund (federal) and Land (state) police arrangements leading to the current policing structure and arrangements. Notably, federal policing has become less restricted. Recently it has significantly increased in size with a trend towards centralisation (Frevel and Kuschewski 2009; Rickards and Ritsert 2008; Ritsert and Pekar 2009). The notable change in German policing is that the model that initially emphasised decentralisation is becoming increasingly centralised. Interestingly, this has been done in an overt manner and can be plainly viewed in amendments to the Constitution that expanded the scope of federal policing functions and responsibilities across the nation (Frevel and Kuschewski 2009, 54).

#### **6.4.1 Constitutional Arrangements and Policing**

In contrast to the constitutions of Australia, Canada and USA the *Grundgesetz* is easily amended. Under past constitutions policing was generally centralised, especially under National Socialism. After the war, East Germany continued in the centralised mode while West Germany went in the opposite direction and became highly decentralised.

At reunification the centralised East German police force (*Volkspolizei*) operated as a paramilitary force and was to go through a significant change in order to become part of the new decentralised policing structure. The West had policing decentralised with each of the 11 *Länder* providing a police force responsible for all aspects of policing in its jurisdiction including providing law enforcement services for the federal government administration (BKA 2011a and b; Rickards and Ritsert 2008, 4–5).

The foundations of the current policing structure began in West Germany when in 1951 the federal government established two police agencies: the paramilitary border police (*Bundesgrenzschutz*, BGS) with a role to secure the borders and control movement across them (Rickards and Ritsert 2008, 3–4) and the Federal Criminal Police Office (*Bundeskriminalamt*, BKA). The BKA was a central agency and worked with State police and coordinated the information and intelligence exchange between the police forces. It did not have an operational role and relied upon the State police agencies (*Landespolizei*) to undertake law enforcement operations on its behalf. There were clear parallels with Australian policing up to the 1970s.

At reunification the Constitution allocated policing as primarily a sub-national government power at Article 70 and only permitted federal police agencies to operate in respect to matters contained in the Article. Later the federal role for policing was expanded and was detailed in Article 74. This allowed federal police to investigate matters of national importance, involving criminal activity that transcended State borders or was national in nature including the provision of services in the national interest. The criterion was later expanded to provide central services and coordinate

and exchange information and intelligence between police forces along with international liaison.

The expanded powers allowed the BKA to also establish its own investigation arm to be responsible for specific federal crimes; assist *Länder* forces when required; or when directed by the Minister for Interior, undertake specific investigations. The BKA has grown significantly since its establishment to the point where it is now plays an expanded and critical role in German policing.

The Constitution currently provides for a two-tier police structure which allocates the *Bund* and *Länder* police with police duties and roles, of which the majority are undertaken by the *Länder* police forces and involves the prevention, investigation and prosecution of crime, including where requested federal matters. They also include maintaining public order and providing traffic police. Many cities also have a Municipal Security force (*Städtischer Ordnungsdienst* or *Ordnungsamt*) that performs minor police-type functions.

The current structure of federal policing was the product of constitutional reforms in 2005 that provided the BKA with a greater role in policing. The role of the BKA expanded significantly due to European unification and “the BKA has become the central German coordinating institution for police activities” (Rickards and Ritsert 2008, 4). From a policing perspective the role of the BKA is comparable with the AFP. The BKA has expanded its staff from 482 in 1955, 3,979 in 1990 and 5,500 in 2009 (BKA 2011a) and the numbers are expanding with the increased role of the national government in policing.

The key characteristic of German policing for comparative purposes is the important function the Constitution plays in the assignment of policing functions. Since reunification it has specifically articulated every change to the policing arrangements, structures and the functions of the respective police agencies in the two tiers of government. One result of this approach is less jurisdictional tensions exist as all roles and relationships are in theory clearly defined in the Constitution.

The clarity of the role and responsibilities of the BKA and sub-national agencies is also assisted by the fact the criminal law is constitutionally a national responsibility and all police work is conducted under one law so there is less chance of jurisdictional disputes between the respective agencies.

#### **6.4.2 Policing in Practice**

The police forces in each of the 16 *Länder* are organised differently but in common with all such forces they are established under their respective *Land* constitution and the primary responsibility of each force falls to a *Land* government minister, the Minister of the Interior. The *Länder* have different internal structures and operate independently from each other in most areas but operate under a common criminal law along with many other laws concerned with policing. Within each *Land* there are internal organisational structures but much of the policing units and activities are common. Governance of the *Landespolizeien* is the direct responsibility of the Minister of the Interior (Rickards and Ritsert 2008, 3; Ritsert and Pekar 2009, 18).

The federal police agencies are under the direct control of the national government, in particular the Minister of the Interior. However, the governance of the federal agencies and *Land* police agencies is not a matter of clear demarcation as there are mechanisms in place providing input for all ministers. The General Conference of the *Bund* and *Land* Interior Ministers provides a formal opportunity for *Länder* and the federal government to influence policy and discuss common issues concerning the respective agencies and is the peak body for policy making in policing (Ritsert and Pekar 2009, 20–24; Rickards and Ritsert 2008, 3–4).

Like Australia, the governance of policing is primarily the responsibility of a respective minister in the executive government and certainly differs for instance from the complex Canadian arrangements. The *Landespolizei* function relative to crime and public order and the accompanying traffic matters mirror the functions of any Australian State police agency. *Land* policing has not changed significantly and the size of the 16 agencies has remained much the same. On the other hand, constitutional

changes have expanded federal policing. Federal policing responsibilities have increased along with commensurate increases in personnel and funding. Like other Western nations the recent experience of policing is that the nature of crime has changed significantly and has become more organised, sophisticated and respects no borders, both national and international. Additionally, policing has changed to the extent to which it needed centralised national support services to increase efficiency and effectiveness, with the obvious choice of service provider being a federal police agency like the BKA (BKA 2011a, Ritsert and Pekar 2009, 20–24).

The level of crime and incidence of terrorism has been increasing significantly since the 1970s in Germany (like other Western and European nations) and the independent State force structure was not capable of responding to the increasing problems. This gap created the opportunity for the federal agencies, especially the BKA, to fill the void and in turn the Constitution was amended to enhance the functions of the BKA. Primarily the amendments increased the BKA's role in operational policing to the point it has become a significant investigation agency in its own right for some areas like organised crime and terrorism. This has increased its influence and role in policing across the nation.

The increasing functions of the BKA have also included support for State forces in the area of criminal investigation, information and intelligence coordination and exchange, national forensic services and standards and the development of police methods and strategies for law enforcement. The BKA is also the representative for German policing in Europol and Interpol, thus all *Länder* agencies have to rely on the federal agency for information and intelligence of an international nature. This is very significant for the 16 *Länder* agencies given that most *Länder* border on one or more of the nine other nations bordering Germany. This is an important issue for the *Länder* as the EU arrangements have effectively made the national borders porous (Ritsert and Pekar 2009, 25).



Because of Germany's style of 'administrative federalism' where policy is typically made centrally but implemented and administered locally, federal policing continues to play a lesser role as the *Länder* agencies continue to undertake much of the operational and investigative policing matters on behalf of the federal government.

The issue of jurisdiction is less of an issue than in Australia because the criminal law is enforced by *Land* police and related procedures are owned by the federal government. The uniformity of the law makes the issue of jurisdiction relatively insignificant for police as they go about their functions. Giving weight to this proposition is Frevel and Kuschewski who identified three elements providing "a certain uniformity in the police in Germany" (Frevel and Kuschewski 2009, 53) allowing the police agencies across Germany to work together with the federal police and mitigating the potential for jurisdictional problems. The three elements are:

- The General Conference of the *Bund* and *Länder* Interior Ministers makes uniform (national) policy on internal security that is coordinated through the federal government;
- *Länder* police rely on federal criminal and traffic law and procedure; and
- Upper level managers of all police forces are trained together at the German Police University.

Although these three elements are primarily strategic in nature, they facilitate the smooth operation of policing between the internal borders and the effective national operation of the smaller federal police agency.

It should be noted that recent statistics provided by Ritsert and Pekar show that in the years 2001–2007 (inclusive) federal police numbers increased while *Länder* numbers decreased: "this may be interpreted as an indicator for the increasing relevance of the federal police services" (Ritsert and Pekar 2009, 23). Much of the increase has been attributed to the expansion of the federal police jurisdiction with the BKA investigating of organised drug crime, terrorism, white-collar crime, cyber-crime and human trafficking, nationally, and not relying on the traditional arrangements with

State agencies. This has meant for many areas of policing, federal police have replaced *Länder* investigators in order to fulfil expanded operational functions and in addition they now also provide centralised support services to *Länder* police.

When all of the information concerning the national government and its agencies is considered, it supports the view of many commentators on German policing that the federal police are playing an ever increasing role: “The total number of police officers at federal level has increased from 2001 to 2007. Compared with the decreasing number on the federal states’ level this may be interpreted as an indicator for the increasing relevance of the federal police services” (Ritsert and Pekar 2009, 23). Whether this increased role is outside the strict letter of the respective article in the Constitution is not contentious but there is no doubt that policing in practice is becoming increasingly centralised.

#### **6.4.3 Centralisation and German Policing**

The German Constitution is a modern one, and in contrast to Australia is relatively easy to amend—in fact in its short history it has been changed several times in respect to policing. When considering the German policing model from a comparative perspective, what is obviously different is the German Constitution recognised the need for a national police force in a modern federal state and provided the appropriate enumerated powers. The Constitution was amended to recognise the requirement for federal policing agencies and details the functions and responsibilities it plays within the national political arrangements and this articulates the national policing structure and how it operates. This resulted in increased centralisation being undertaken formally and unambiguously within the federation.

It is worth noting that the German policing model has many similarities with Australia, including policing being owned by government, with one major national agency and the *Länder* providing the other 16 police agencies. The functions of the *Landespolizei* are similar to their Australian equivalent State agencies and likewise the BKA and its counterpart, the AFP. Both federal agencies’ growth rate over the past

decade has outstripped the State agencies and the expansion has been due to increased responsibilities and funding provided to address new and emerging crime problems (including terrorism) spilling over to the federal government. Additionally, the provision of national services by the federal agency has been an important factor in respect to the efficient operation of *Länder* agencies.

It is clear that the centralising trend in Germany has many parallels with Australia. Regardless of the constitutional differences to facilitate change both federal governments have expanded the national agency and the rate of growth have both been greater than the State and *Länder* agencies. Drivers of change for Germany have been similar with the BKA for instance expanding into operational policing areas concerning terrorism and organised crime along with taking some responsibilities for new and emerging crimes. However, in many instances responsibility for operational investigations is being shared or primarily undertaken by the *Länder* agencies.

The chief difference in the comparative experiences lies in the continuing strong role for the sub-national police forces in Germany resulting from the particular character of German federalism. Regardless, the German experience of giving federal policing a greater role in many aspects of policing and others being shared supports the findings in the previous chapters concerning the Australian experience. For instance, spillovers, new federal crimes and the need for efficiency, like in Australia, have driven the contemporary change to German policing. The effective operation of federalism, like in Australia, has been central to the change in policing in Germany.

## **6.5 Switzerland**

The Swiss federation has existed longer in its present form than any of the federations except the USA, and much longer in its earlier incarnation. A major difference between Switzerland and most other federations is the ease at which the constitution can be changed, a regular activity for its citizens considered to be the rule rather than the exception. Swiss federalism recognises three levels of government—

municipal/communal, cantonal and Federal, and this structure is reflected in the Swiss policing model allowing policing to be conducted on three levels.

It should be understood from the outset that Swiss federalism is recognised as the most decentralised of the four nations and it is one of the most decentralised nations in the world (Linder 2010; Fenna 2012b, 588). Under the Constitution of the *Helvetic Confederations*, policing is a responsibility for the 26 cantons. They in turn allow many local government entities and large cities to provide police forces. The federal government has its own police agency, which is regulated in the Constitution to a range of specific functions. Police in all jurisdictions use the Federal criminal code and the cantons provide the judicial structure used to administer the law—similar to Australia. Overall, policing is provided at the canton, municipal and commune level with some Federal involvement and the policing model can be characterised as highly decentralised (Federal Department of Justice and Police 2011; Federal Office of Police 2011).

#### **6.5.1 Constitutional Arrangements and Policing**

Swiss policing is a three tier structure that consists of: one Federal agency; 26 cantonal police corps; and over one hundred municipal and communal police corps. Policing is primarily the responsibility of the sub-national governments (cantonal and local) and the national government only plays a small role and has limited powers and resources (Federal Office of Police 2011 ). The explicit constitutional position is policing *per se* is owned by the Cantons. The management of police agencies is independent of Federal government and governance of them is the responsibility of the respective canton or local authority.

In 2000 all Federal agencies involved in policing were amalgamated into one single agency to take responsibility for Federal police issues including the support of the sub-national police agencies. The Federal Office of Police (*fedpol*) is the sole national agency and currently the agency employs 780 staff and is based in the national capital, Bern. The agency is governed by the Federal Department of Justice and Police.

The bulk of police still work at the sub-national level and are responsible for all police functions not assigned to *fedpol*. The bulk of the work undertaken by sub-national police agencies is similar to what Australian State police agencies undertake but they also provide law enforcement and investigation services for the Federal government. The individual police agencies vary greatly in the way they operate and what infrastructure is provided. The cantonal police fundamentally deal with law and order, traffic and criminal investigation. Some cantons allow their municipalities and communes to have their own police and most of these police forces are responsible for only minor law and order functions and parking. In some larger cities the municipal police also deal with traffic and in Zurich, Winterthur and Lausanne they also investigate crime. The cantons are responsible for providing basic training for police recruits who serve at canton as well as in municipal and communal forces.

Policing in Switzerland is very much a sub-national responsibility and even though recent amendments have increased the role of Federal policing, it remains secondary in the national policing structure.

#### **6.5.2 Policing in Practice**

Policing in Switzerland appears to have no obvious blurring of roles and responsibilities between the tiers of government police agencies. Where crime problems are multi-jurisdictional in character and involve joint operations between agencies, *fedpol* has a mandate to coordinate operations and it would appear individual agencies preserve the *status quo* and continue to be responsible to the respective sub-national governments for operational policing. The Federal government does not play a role in the policy making for the sub-national agencies unlike most other federations where Federal governments are able to obtain influence through funding, legislation and policy, although the criminal law is national.

The Federal police are restricted to national roles and have a structure divided into four divisions: criminal investigations of serious crime; security of Federal personnel and property; support services for all police agencies; and national and

international liaison and co-ordination of police services and criminal investigations (Federal Department of Justice and Police 2011; Federal Office of Police 2011). One of the reasons why sub-national policing maintains its independence and increasing centralisation does not appear to be an issue, is the strong support for decentralisation at all levels of politics.

Federal government administration and agencies are controlled by the executive government, the seven people Federal Council. The members are elected by the bicameral parliament; National Council and Council of States and like the national parliament have a decentralised focus on government. The 46 member Council of States membership is elected from the respective cantons and provides a political perspective from that level that directly influences and fosters a decentralised approach to services like policing. The Council is but one of the strong sub-national influences that permeates the governance of policing by the Federal Department of Justice and Police.

Regardless of the entrenched power of the cantons, in reality there is a centralising trend that sees the Federal government increasing its role in policing and related policy, although it would appear in comparison with other Federal nations to be much less. This trend is evidenced by the 2000 reforms of Federal policing that entailed the recognition of globalisation and Europeanisation as being responsible for the growth of crimes of a national and international character, requiring primarily a federal government response to effectively counter the threat. Obvious examples included drug trafficking, organised crime, terrorism and cybercrime. There has been a change “that touches core aspects of sovereign statehood and in particular, the canton’s traditional police monopoly” (Lavenex 2006, 246) and this is due to the impact of “Europeanisation and internationalism” (Lavenex 2006, 246) and is strengthening the Federal police at the expense of sub-national units.

Swiss policing is clearly an area of government service problematic for the confederation as by necessity the changed nature of crime problems and threats faced

by policing now requires greater Federal involvement and resourcing. This is diminishing some of the traditional sub-national government control of policing. This in the case of Switzerland (like most other western nations) is simply the way of the world and the product of increasing crime, technology, Europeanisation and globalisation.

### ***6.5.3 Centralisation and Swiss Policing***

The Swiss policing model is much different in structure to Australia because of policing being decidedly decentralised. The ethos of Swiss federalism plays an important role in forming the policing model as the emphasis on sub-national independence and the national government's machinery of government being limited, has strongly influenced the development of policing across the nation. This is reflected in the structure and powers of Federal policing, which clearly defers to the sub-national jurisdictions and is constrained wherever possible.

However, like Australia and many other Western nations there has been a change to policing at odds with the traditional decentralised approach to government services. There has been a trend towards centralisation and expansion in the scope of federal police functions, resulting in additional resources and powers. The sub-national agencies must now work more closely with their federal counterparts. These changes have been irresistible because of the common problems experienced by all Western nations since the 1970s associated with increased crime rates of an international nature (Lemieux 2010). In the case of Europe, the Europol agency was formed in 1993 and has expanded significantly with a mandate to fight international organised crime and terrorism. Switzerland is not a member of the EU but is a member of Europol as it entered into a formal agreement in 2006 and is in effect a full member (Federal Office of Police 2013). The causes of increased crime have been mainly attributed to globalisation and associated criminal activity concerning organised crime, terrorism, new and developing crime in the form of cybercrime and white collar crime. The Swiss decentralised policing structure (like many other modern Western nations)

was incapable of addressing the externally driven crime and terrorism problems and had to change to become more effective and this required a shift toward a more centralised policing model. Nonetheless the Swiss model remains significantly less centralised than Australia because of the Federal government's reliance on sub-national police agencies for most investigation and enforcement activity and the general resistance to centralisation in Swiss Federalism.

In respect to the Australian policing experience there is certainly a clear parallel with the Swiss accepting the need for the federal government to play a greater policing role and the recent evidence of that was the formation of the Federal Police. However, the Swiss never took the next step and provided the Federal agency with exclusive responsibility for specific functions and maintained the reliance on cantonal and local policing for most of the operational policing functions for federal investigations.

## **6.6. United States of America**

The final case to be considered is the United States (US). Consideration of the US is essential for any policing comparison because the US is considered to be a leader in many areas of policing and law enforcement, as well as being the largest and most influential federal nation in the world. From a political and public policy perspective considering the US is logical as it is a federation with a related colonial history to Australia and has similar legal and judicial processes and institutions—and indeed provided the template for much of Australia's federal system.

In any comparative exercise like this involving the US, the great icons of the American polity and government, the Constitution and Bill of Rights (the first 10 amendments, ratified in 1791) are central. The Constitution provides an enumerated list of federal government powers and assigns Congress supremacy in the exercise of those powers. It does not enumerate State powers, but instead leaves the States with all powers not explicitly denied them. Like Australia, which followed the US design,



residual powers fall to the States and as policing is not an enumerated power of the federal government, it is considered to be a State responsibility.

The US policing model as it stands reflects the nation's political and social history and provides a model that substantially differentiates it from the Australian model and many other Western democracies. The history of settlement saw policing established on a town and county level with States and the Federal government maintaining their distance and allowing police agencies to be established individually on a local basis and hence resulting in a highly decentralised police structure (Sturma 1987). The decentralised nature of policing has made US policing different from most other nations as primarily it is provided by local government rather than the States or the federal government. It is interesting to note that like Australia and Canada, local government is not recognised in the US Constitution.

Policing is, however, not solely a local government responsibility as the States and the Federal government do play a role in policing. Each State has a single police agency and there are some 65 federal policing agencies. The size of these State and Federal agencies and their functions vary greatly and they generally do not duplicate local policing functions. Policing in the US also has an unusual structural characteristic by having a large private policing component. This area of policing is well developed and highly sophisticated in many areas and is provided by corporate bodies including a substantial number that are statutory authorities like port authorities, transit authorities, housing authorities and school boards. Private policing can trace its history to the *Pinkertons*<sup>65</sup> in the 1860s and has been the focus of many legal and political disputes for over 150 years (Enion 2012, 537–539), which has resulted in a substantial body of law on the topic (Steverson 2007, 20–21; Enion 2012). What is unequivocal is private policing is a legitimate and integral component of the US policing structure.

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<sup>65</sup> The Pinkerton detective agency was began in 1850 in Chicago and is still providing private investigations in the US. The agency provided private police services to the frontiers in lieu of government policing.

Historically private policing has been there to fill the gaps in policing left by local agencies that generally did not have the resources or perceived jurisdiction to police private or statutory controlled properties. Also noteworthy was the fact in the 19th century, federal and State governments simply refused to police newly settled areas or remote areas and the only alternative was private policing (Sturma 1987<sup>66</sup>).

When the diverse component parts constituting US policing are tallied it provides a very complex structure made up of thousands of individual agencies, most with different agendas and accompanied by the obvious jurisdictional problems. The primary problem with the policing model is the inability to have a system of effective coordination and cooperation between agencies. In many respects the model of policing and its structure is the product of the Constitution and the focus of independence for communities and thus the tradition of police agencies being locally owned, governed and operated independently. This outline of US policing and how it operates has had a central theme of constitutionality and this is explored further.

#### **6.6.1 Constitutional Arrangements for Policing**

The 10th Amendment of the Constitution concerning the residual powers being the responsibility of the States is considered to provide the basis for policing being primarily a sub-national responsibility (Gaines and Kappeler 2011, 7). This law allows the States to delegate to their political subdivisions the authority to establish agencies to preserve and protect the safety, health and welfare of the community. This approach by the States has maintained the decentralised police structure and domination by local government policing at municipal and county level. Constitutionally, the Federal government has the power to enforce its law and establish police agencies for that purpose, while States also rely on the Constitution and Bill of Rights to authorise police agencies at State, local government and in some cases private sector level (Enion 2012).

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<sup>66</sup> Sturma's book was a comparative analysis of *Frontier Policing* of Australia and the US and clearly demonstrated the significant difference between the role undertaken by government on each frontier i.e. concerted role in the Australian colonies *vis-à-vis* insignificant role in US States and Territories.

Three significant dimensions of US policing are:

- The Constitution permits the federal government to establish and operate policing agencies to enforce federal laws. Unique to the USA, the federal government has established an agency for each established law enforcement area and not relied upon a single or several police agencies. This approach currently provides 65 agencies employing 105,000, enforcing specific agency legislation and operating independently across the nation (Follensdal 2010; USDOJ 2013a).
- General policing of the community is undertaken at local government level by autonomous and independent police agencies to the extent there are so many agencies in the USA, the true number of agencies and officers employed can only be estimated. The US Justice Department 2008 census of law enforcement agencies identified 17,360 police agencies and 1.133 million persons employed on a full-time basis, including 765,000 sworn officers. Significantly 49 per cent of the agencies had fewer than 10 employees and 64 per cent less than 100. Agencies with more than 100 officers accounted for 36 per cent and agencies with more than 500 employees accounted for 1 per cent and those with more than 1000 employees accounted for just 0.46 per cent (USDOJ 2013b).
- There are a large number of private agencies that provide police services. In 2008, 9.6 per cent (1,733) of the 17,360 police agencies were of this type (USDOJ 2013b).

Practicably, policing in the US from a political perspective has been considered to be a State responsibility for which the States delegate down to local government or allow corporate and statutory bodies to take responsibility to be the service provider. Additionally, the federal government is enabled to establish independent agencies for policing of specific areas of federal laws. However, in the case of some agencies like the Federal Bureau of Investigation (FBI) some of its functions—such as criminals committing crimes in several States or fleeing justice and travelling to another State—

triggers investigation and arrest powers for State crimes thus blurring the demarcation lines between national and sub-national government policing responsibilities.

### **6.6.2 Policing in Practice**

The recent background to contemporary US policing has like most other Western nations has been shaped by rapid social change in the 1960s and 1970s. The main outcome of this experience was significant increases in both the volume and nature of crime throughout the country (Steverson 2007). At local level, the primary functions of the vast amount of public policing agencies are similar to what Australian police do at the State police agency level. There are clear differences with the functions undertaken by county police and State police and these agencies also significantly differ between themselves across the USA.

Local agencies all have different governance arrangements and can generally be described as being subject to direct political control in smaller agencies while in many of the larger cities like Los Angeles they are governed by a board of commissioners. However, the States continue to exert a significant policy making role (Bulman-Pozen and Gerken 2009; Scavo, Kearney, and Kilroy 2008; Scarborough 2006) through legislation and policy and this can influence the functions of police. State criminal laws, courts and funding provides this level of government with the mechanisms to influence local police, akin to how Canadian provincial governments are also able to gain leverage and influence over policing at this local government level.

In respect to the national government influencing policing at a local level, at times it has exerted a significant pressure through the means of legislation and funding. A past example was in 1919 with the 18<sup>th</sup> Amendment to the Constitution and passing of the Volstead Act leading to *Prohibition*. This legislation affected police in respect to enforcement of liquor laws and has also been attributed with being responsible for the circumstances that resulted in the growth of organised crime in America. The federal government introduced the legislation and with the dearth of its own police agencies, relied on the decentralised and local government police agencies

to enforce its law (Steverson 2007, 22). The failure of the enforcement of this law demonstrated two important features of policing: the national government had no effective control of local grass roots policing; and it required its own police to enforce the prohibition law. These shortcomings led to the invigoration of several small investigation agencies within the federal government and were the precursor to the structure of federal policing as it is today. The model of policing at all levels was irreversibly affected by what happened in the 1920s and 1930s (Steverson 2007).

In respect to the problem of influencing local policing across the USA and the functions undertaken, including those concerning federal law, this has been problematic. This has been a recognised issue for governments and since the 1970s federal funding for local police agencies has been the major instrument to influence policing at the local level. Primarily this has been done by providing grants tied with specific conditions and outcomes being mandated in order to achieve additional funding. Contemporary programs have included the 1994 Community Orientated Policing Services (COPS) program that has continued since its inception. The program provides grants “to help law enforcement agencies to hire more community policing officers, to acquire new technologies and equipment, to hire civilians for administrative tasks, and to promote innovative approaches to solving crime” (USDOJ 2013c; Koper 2003). The Local Law Enforcement Block Grant Program (LLEBG) ran from 1996 to 2004 and funding ranged from \$424 million a year to \$115 million in 2004. Both State police and some 1200 local agencies received conditional grants “aimed at units of local government to reduce crime and improve public safety’ (Bauer 2004, 1). Additional grants are also available for matters concerning federal policy interests such as 19 different categories of grants concerning violence against women.

Recently the Federal government took a legislative approach to influence local policing functions through legislation that followed the 9/11 terrorist attacks. This involved the *Patriot Act* of 2001 and had a mixed response from police agencies and demonstrated the local government agencies were the product of State governments and at the end of the day accountable to them. In the States of Alaska, California,

Colorado, Hawaii, Idaho, Maine, Montana and Vermont legislation “denouncing the Act as an assault on civil liberties” (Bulman-Pozen and Gerken 2009, 1278) was passed. The result of the action by these States was more symbolic than effective and nothing came of their protest: “Because the states are not autonomous sovereigns standing to one side of the federal scheme, they are unable to back their rhetoric with concrete action” (Bulman-Pozen 2009, 1280). Additionally, five States passed legislation directing police officers not to enforce portions of the Act (Scavo, Kearney, and Kilroy 2008, 1278). What this State-led resistance to a federal law demonstrated about US policing was sub-national agencies were also responsible for enforcing federal law.

Overall, the *Patriot Act* and other post-9/11 legislation illustrated the strong position of the national government in US policing, when it wants to flex its constitutional muscle. In addition the use of grants is a successful mechanism to influence police-related policy at State and local government level. However, the highly decentralised structure of policing, with over 17,000 agencies, makes auditing compliance of the agencies in respect to legislation or conditional grants very difficult and probably not very practicable. It would appear logical to conclude the influence of the federal government in policing is diluted by the large amount of local agencies operating across all parts of the USA.

The US government like Australia and most other nations has expanded the scope of federal policing since the 1980s and it is now a large part of policing, much larger than most other nations. Therefore, federal policing merits additional consideration because of the sheer size of resources expended in this area and its impact on the centralisation of policing.

### **6.6.3 Federal Policing**

The functions undertaken by each of the 65 Federal policing agencies are generally linked to a specific power of the federal government. Several of the current large agencies were derived from small units that were established administratively in the 1920s and steadily grew to the point where by the 1970s they become major agencies

in their own right. Prime examples are the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI). Both bureaus were established in the *lawless years*<sup>67</sup> following the start of prohibition which was characterised as a period of great violence orchestrated by organised crime groups across the US, in particular the major cities. This crime problem was sheeted home to the government's prohibition laws, and led to the need for a federal response to address the related national crime wave. These police agencies took up the challenge accordingly and have never looked back. Both agencies and other agencies like the Drug Enforcement Administration (DEA) are well known today and provide, along with the 62 other federal agencies, a model of federal policing unique in the world.

Individual agencies are established administratively to deal with individual criminal problems. From a functional perspective, where a national crime problem arises, in many cases a new policing agency is established to address the problem. This approach is different to Australia and Canada where the single policing agency expands its scope of functions to address the problem. Perhaps the most recent and best example of the US approach was the establishment of the Department of Homeland Security, established to deal with terrorism on home soil after 9/11.

The US from a national policing perspective has been the world leader in providing support services for all police agencies, akin to those central services provided by in other nations and Australia by the national government or its police agency. In 1924 the FBI established a national fingerprint identification and database and has expanded this system in recent times and operates the National Crime Information Center (NCIC), which provides a national repository of criminal records and the related fingerprint and DNA information. The Department of Justice and the Department of Homeland Security co-manage the US National Central Bureau (USNCB) providing international liaison for all US police agencies. Although the federal government provides less support services than the other governments it is still

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<sup>67</sup> The History of the FBI (FBI 2013) provides a detailed description of this period and the effect it had on policing in the US at all levels. The lawless years were formative for the development of federal policing.

substantial and influential in respect to compliance by all agencies to national policing policy, set by Washington.

#### **6.6.4 Centralisation and US Policing**

Since the late 1920s successive federal governments chose to expand the scope and range of federal policing and this is clear evidence of the centralisation emanating out of Washington. From a federalism perspective the US has used a range of mechanisms including legislation, funding and to a lesser degree the provision of nationally coordinated services to influence policing. Fiscal support to the vast amount of sub-national police agencies has been critical for the federal government to achieve the policy goals it set for policing. This *modus operandi* has been applied effectively since the 1970s and its use has increased substantially in response to the 9/11 events.

Unlike Australia, the rich history of *States' rights* permeates much of the division of power between federal policing and the thousands of sub-national agencies. The US policing model is dominated by local government policing, for this is where the majority of policing resources are applied. The governance and management of the agencies rests with thousands of divergent political bodies while there are only eight in Australia. Police governance in comparison with Australia differs greatly at a local level because of the highly decentralised nature of policing. Local communities, especially municipal governments, are provided with input for the control and management of an agency, while at a State and national level, control of the respective agencies is centralised like Australia.

The stark difference in the structure and governance of police agencies between the two nations evidences the difficulty in making any meaningful comparisons. There is however one important similarity with the structure of US and Australian policing, which is the recent expansion of federal policing after the 9/11 terrorist attacks. The US government has become more involved in policing but its involvement remains not as influential or involved as Australia and most other federations under consideration. Decentralisation of policing is the one constant in the



model of US policing and its effect characterises a model of policing significantly different to Australia.

## **6.7 The Australian Comparison**

While there are five quite different federal systems to consider in the comparison, it is equally clear that within the limits set by those differences common trends and common drivers of those trends are evident. Like Australia, and regardless of the entrenched political ideology in nations, an increased role for the federal government in policing has occurred to varying degrees. This trend has been driven by the spillover of crime that has made solving crime problems beyond the jurisdiction and resources of sub-national governments. New criminal laws and new federal policing functions are the consequence of the changing world that is causing the globalisation and internationalisation of crime. National governments are simply best equipped in all respect to respond and this is occurring in Australia and to varying degrees in the other four nations.

There are some important observations that have been derived from the comparison, but before these are discussed the table following describes the key dimensions of the respective jurisdictions and is an aide to the final analysis.

**Figure 6.2: Comparison of Policing Dimensions for Australia, Canada, Germany, Switzerland and USA**

<i>Dimensions</i>	<b>Canada</b>	<b>Germany</b>	<b>Switzerland</b>	<b>USA</b>	<b>Australia</b>
<b><i>Policing enumerated power in Constitution</i></b>	No	Federal Police Article 73 State Article 70	Article 43a(1) Cantons responsible	No	No
<b>Police Structure</b> <b><i>Federal Police Agency</i></b>	1—Royal Canadian Mounted Police (RCMP)	2—Federal Crime Police Office (BKA ) & German Federal Police (BPOL)	1—Federal Office of Police (fedpol)	65	2—Australian Federal Police (AFP)  Australian Crime Commission (ACC)
<b><i>State Police Agency</i></b>	2 - Quebec & Ontario; other provinces contract RCMP	16 Land forces	26 Canton forces	50 State Police Forces	6 State and a Territory Police Forces
<b><i>Local Government Police Agency</i></b>	Approx. 460	Nil	300 plus	Approx. 15,500 in 2008	Nil
<b>Governance</b> <b><i>Responsible Office or Body</i></b>	Federal: Minister for Public Safety  Provincial: Minister for Justice  Local: Board, Commission or Council	Federal and State: Minister of the Interior	Federal: Minister for Justice and Police  Canton: Elected member of Government Municipal and Commune: Elected member.	Federal: Administration appointed Secretary  State and Local: Agency Head responsible to an elected government official.	Federal: Minister for Home Affairs and Justice  State: Minister for Police

<i><b>Dimensions</b></i>	<b>Canada</b>	<b>Germany</b>	<b>Switzerland</b>	<b>USA</b>	<b>Australia</b>
<b>Funding</b>	Federal government has funding agreements in place for policing at all levels and this varies depending on the nature of the arrangement. National support services funded by federal government.	Federal government is the main source for all police funding across the federation.	Federal, Canton & Municipal/Communal governments fund policing agencies from local funding sources. Federal government is also an important source.	Direct funding from governing Federal/State/municipal government sources. Federal grants provided to agencies for specific purposes. National services funded by federal government.	Direct funding from Commonwealth and State government. Small amount of Commonwealth grants provided directly to State agencies and part of funding for national police services.
<b>National Policy Domain</b>	No national policy forum established between national and provincial government.	General conference of the National and State Interior Ministers.	Conference of Cantonal Justice and Police Directors(CCJPD)  Conference of Cantonal Police Commanders (CCPCS)  Swiss Association of Municipal Police Chiefs (SAMPC)	No national policy forum.	Ministerial Council Police Emergency Management-Police (MCPEMP)—Police Ministers  Senior Officers Group (SOG)—Police Commissioners
<b><i>Criminal Law</i></b>	Federal	Federal	Federal	Federal, State and Local	Federal and State
<b><i>Traffic Law</i></b>	Federal & State	Federal	Federal and Canton	State & Local government	State (Uniform national traffic code)
<b><i>Judicial System</i></b>	Provincial	Federal & State	Federal	Federal, State and Local	State

<i>Dimensions</i>	<b>Canada</b>	<b>Germany</b>	<b>Switzerland</b>	<b>USA</b>	<b>Australia</b>
<b><u>National Services</u> National Criminal ID &amp; Fingerprint record System –</b>	RCMP, Canadian Police Information Center (CPIC)	Federal Crime Police Office (BKA)	Federal Office of Police (fedpol)	Federal Bureau of Investigation, National Crime Information Center (NCIC)	CrimTrac
<b>National DNA Database</b>	CPIC	BKA	Fedpol	NCIC Combined DNA Index System (CODIS)	CrimTrac
<b>National Forensic services</b>	RCMP, National Police Services (NPS) Forensic Science and Identification Services	BKA	Fedpol	Individual agencies and federal agencies	National Institute of Forensic Science (NIFS)
<b>International Liaison</b>	RCMP	BKA	Fedpol	US National Central Bureau (USNCB)	AFP
<b>Advanced Training</b>	Canadian Police College	German Police University	Swiss Police Institute	Individual agencies	Individual agencies
<b>Federal Agency Funding &amp; Resources 2000 - 2010</b>	Increased	Increased	Increased	Increased	Increased

## 6.8 Conclusion

This international comparison was applied to determine if the Australian experience concerning policing shifting from being a strictly sub-national responsibility to being nationally-integrated and federally-driven, only occurred in Australia or whether such changes have been experienced in other nations. The key issue explored was the increased role of the federal government and the extent of centralisation in policing as compared to the Australian experience. The conclusion made is these other nations had a similar experience to Australian policing. Policing changed in Australia and this has also been the case for these other nations.

The comparison has shown that this experience and trend of greater federal involvement in policing occurred to varying degrees in the four federal nations considered. It clearly indicates this trend is international in character for western federal nations and that Australia's similar experience was not exceptional.

On a scale for federal government expansion measured by *centralisation* Germany and the USA would be closer to Australia, followed by Canada and lastly by Switzerland. The obvious reason for these ratings has much to do with the internal political arrangements and degree of decentralisation in the federations overall. Most important was the influential decentralised federalism philosophy in nations like Switzerland and Canada.

The investigation of the experience of the other nations clearly identified the common trend that national governments were expanding their role in policing in both operational and support areas. The issues and events driving the expansion of the federal role in policing have been strategic in nature and primarily centred on spillovers and new and emerging crime problems, many of which emanated from outside of municipal, county, state and national borders. The fact that national governments were best endowed both constitutionally and fiscally to respond to these new crime problems and threats that spilt-over sub-national government's capacity to respond, has been critical to change. In most instances the increase in crime was a result of globalisation and the successful operation of international

crime groups. This placed the focus on the national government in the first place as it was the only appropriate level of government to respond with suitable laws and the resources to police this new and extra criminal activity. This has been the case in Canada, Germany and Switzerland that own the whole of the criminal law. In the case of the US and Australia, the States have generally accepted and as is the case recently in Australia, consented and encouraged the national government to take on specific responsibilities for criminal laws concerning terrorism, organised crime and cybercrime.

National government in all of the jurisdictions have also used their fiscal power to provide national support services and without doubt made sub-national police at all levels reliant upon these services. As with the other influences mentioned, this has to varying degrees been another explanation for integrating and centralising some police services and responsibilities.

The expansion of the scope of federal policing agencies and national government services provided to policing evidences a more strategic approach to policing by governments and this continues to gain momentum. Australia and the other nations have been on a centripetal journey in the recent past—however, the extent of the distance travelled by Australia has been greater than the other nations. The evidence from this chapter clearly supports the findings from the previous chapters that the increased role of the federal government in policing is a real trend and not just an Australian peculiarity—centralisation has increased. It is the manifestation of changed federalism, to varying degrees, in all of the nations.

The role of federalism in each of these nations has also been observed in regard to how the recent changes to policing have occurred. As argued so far, the Australian approach has been characterised by State consent and support, while in nations like Canada, Switzerland and the USA where policing is decentralised and primarily operated by local government, States play a small role. Federal influence is diluted as the national government has to deal with thousands of agencies in the USA, hundreds in Canada and Switzerland. Germany is closer to Australia in respect to the federal influence and its role in policing. However, the German *Länder* still provide a significant amount of federal law enforcement on their own terms.

In the context of federalism this comparison showed that Australian federalism may operate more effectively given the way change has been negotiated and achieved between the federal partners. This is purely an observation and not a definitive statement.

## **CHAPTER SEVEN: THE NEW MODEL OF AUSTRALIAN POLICING**

*To what extent, how, and why has policing shifted from being a strictly State or sub-national matter in Australia to being nationally-integrated and Commonwealth-driven?*

### **7.1 Introduction**

This chapter concludes the thesis and brings together the discussion from the preceding chapters and applies that to the final analyses in order to answer the primary research question in the context of the principal themes of policing and federalism in Australia since 1970. In answering the question, it also establishes that the case study of policing demonstrates the effective operation of federalism to achieve the paradigm shift. In particular, the change to policing was accomplished efficiently and unobtrusively by the federal partners, which centralised some aspects of policing and nationally integrated the whole domain.

The first conclusion reached is that over the period of the four decades, Australian policing was transformed from an exclusively State responsibility to a concurrent one, national in character. The second conclusion is that the change was done in a consensual way. There was a paradigm shift in the structure of policing after 1979 because the Commonwealth for the first time took full charge of its policing responsibilities and as a result policing in Australia changed.

In the context of Australian federalism and how it has generally become more centralised across a range of areas, parallel experiences can be shown for policing. However, as demonstrated in the previous chapters, policing has travelled a different and smoother road than most other areas of government services to achieve its level of centralisation and national integration of services. This study of policing represents a new case study on how Australian federalism can operate and offers another view on how and why change was undertaken in an area of government service within the confines of a federal political system.

This chapter begins by describing the key observations about Australian policing that were derived from the previous analyses and discussion. This is done



by addressing each of the three parts of the primary question: the extent, how and why policing changed over the 40 year period between 1970 and 2010.

The next part of the chapter centres on the key questions surrounding the experience of policing and federalism. This considers the range of contemporary descriptions of how federalism operates and explanations of why change occurred, as identified in Chapter Three. Primarily, the postulations in the literature used in Chapter 3 are tested concerning the changing nature of Australian policing in order to ascertain if they explain the contemporary police experience. In addition to these views, the proposition has been put forward that the case study of Australian policing identified and provided a new view of how federalism can operate to manifest change. It is argued that this new federalism approach has resulted in the change to policing characterised by increased centralisation and sharing of other responsibilities—nationally integrated policing.

Finally, the conclusion is made that centres on identifying whether there is a fundamental explanation for why policing experienced a paradigm shift, or have there been other influences and causes? Has the function of federalism played a role and if so, what was it? What will become clear is that the case study on change to Australian policing demonstrates that its experience differed from other areas within government and it cannot be assumed policing is just like any other government activity. From a federalism perspective, the policing journey has taken a different route than would be expected, but the final destination has been the same as most other travellers.

## **7.2 The Extent of Change to Australia Policing 1970 to 2010**

The extent of the change to Australian policing since the 1970s centres on the fact that the Commonwealth is now involved in policing, a position it never took up in any meaningful way until 1979. It is recognised that all of the eight police agencies in Australia have changed and grew substantially since the 1970s. However, because the Commonwealth's main agency, the AFP, grew from a zero base in 1979 to its position of now being one of the larger police agencies, the focus in this

aspect is Commonwealth policing. The extent of change in respect to the Commonwealth is demonstrated by the sheer size of Commonwealth policing in terms of resources, functions and the role it now plays in policing.

Briefly, the background to the Commonwealth's expansion is at Federation (in 1901) policing was the sole responsibility of State governments and the Commonwealth had no police agency to enforce its laws. Policing was delivered by the six State police agencies and when matters relating to the Commonwealth government required police action, the State police forces acted as the agents of the Commonwealth government (Bryett, Harison and Shaw 1994, 77).

In 1957 the first serious attempt was made by the Commonwealth to enter into policing by legislating to establish the Commonwealth Police Force.<sup>68</sup> This Commonwealth police agency was ineffective and only policed a limited number of Commonwealth laws and was disbanded in 1979. The establishment of the AFP in late 1979 amalgamated all Commonwealth police agencies (except the Northern Territory Police Force) into one agency and aspired to provide the entire policing needs of the Commonwealth—supplanting the reliance on State police agencies. At this time the body of Commonwealth criminal law was insubstantial and all prosecutions of Commonwealth crimes were undertaken in State courts, applying local procedure and evidentiary rules, along with local sentencing regimes.

This brings us to the point of identifying how the Commonwealth expanded into this State domain. The three aspects of this relate to the resourcing, law enforcement functions and the leadership role it now plays in policing.

### ***7.2.1 Resourcing of Commonwealth Policing***

The increased volume of resources provided for policing from government coffers evidences the extent of change since 1980. More resources resulted in more policing services being provided across the federation and the evidence of this is contained in the range of data and information in the statistics (Appendix A). What some of the tables and charts in the appendix reveals is policing since 1980 has

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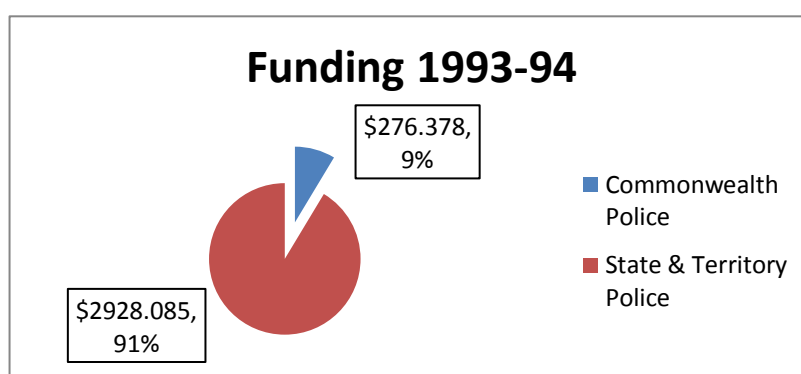
<sup>68</sup> Established by the *Commonwealth Police Act 1957* (Cth). However, the Act was assented to on 12 December 1957 but never commenced until 21 April 1960. The Act ceased on 19 October 1979.

expanded in all of the eight mainstream agencies, in terms of personnel and funding, and at a greater rate than both increases in population and CPI. Importantly, the extent of growth by the Commonwealth agencies since 1980, and more recently after 2000, has been at a greater rate than of the State and Territory police agencies.

In 1980, when the AFP effectively began to operate, it employed 1489 staff or 4.9 per cent of the nation's 30,520 sworn police officers and it cost \$80 million to operate (AFP 2009, 145). Over the 30 year period statistics show the number of personnel employed by the AFP increased by 144 per cent—as compared with the average State and Territory increases of 117 per cent between 1980 and 2010. Funding for the AFP was \$237m or 7 per cent of the national total in 1993/94<sup>69</sup> and by 2009/10, 14 per cent or \$1.34bn of the total national expenditure<sup>70</sup> on policing was provided for Commonwealth policing.

The charts that follow demonstrate how funding increased and the share of the national aggregate funding for all police agencies. The total Commonwealth funding was the aggregate of the AFP and National Crime Authority (NCA) for 1993–94 and AFP and Australian Crime Commission (ACC) for 2009–10.

**Figure 7.1: Australian Police Agencies<sup>71</sup> Funding (\$m) 1993–94**



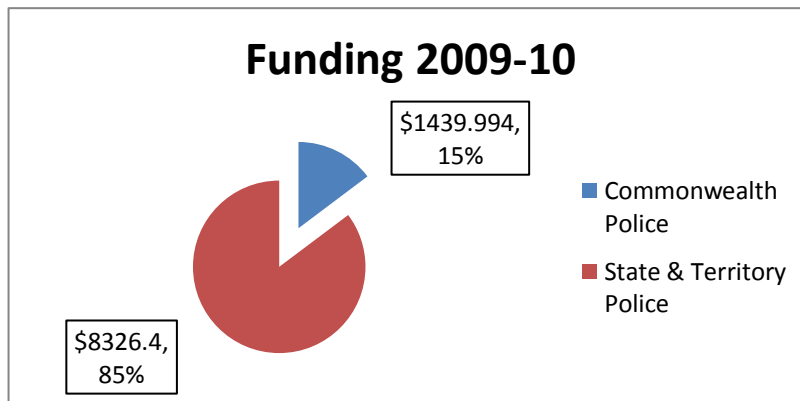
Source: AFP, State and Territory Police—Appendix A Table 5; and for the NCA—Coad Report 1994, 64.

<sup>69</sup> See Chart 12 of Appendix A

<sup>70</sup> See Chart 13 of Appendix A

<sup>71</sup> Commonwealth Police funding is the aggregate of AFP and National Crime Authority (NCA)

**Figure 7.2: Australian Police Agencies<sup>72</sup> Expenditure (\$m) 2009–10**



Source: AFP, State and Territory Police—Appendix A Table 5; and for ACC—Annual Report 2011.

When the expenditure on the Commonwealth and State police agencies is compared, as demonstrated from the financial information, there has been a greater growth by the Commonwealth. Notwithstanding the obvious focus on the AFP, it should be noted that the Commonwealth's other police agency, the ACC, also employed 484 full-time and 62 part-time employees and had a budget of \$95m in 2009-10 (Australian Crime Commission 2010).<sup>73</sup>

### **7.2.2 Expanded Policing Functions**

Underpinning the Commonwealth's expansion into policing has been the significant increase in the scope and range of offences Commonwealth officers have to investigate. Since the 1990s a concerted program to expand the body of Commonwealth criminal law (Appendix D provides a summary of additional Commonwealth criminal laws) has been undertaken and as a consequence there is generally no longer any reliance on State and Territory laws. Most importantly in 1995 the Commonwealth introduced a criminal code and a raft of criminal law

<sup>72</sup> Commonwealth Police funding is the aggregate of AFP and Australian Crime Commission (ACC)

<sup>73</sup> It should be noted that some of the States maintained additional law enforcement agencies, some with a policing focus like the NSW Crime Commission—107 staff and \$18M budget (New South Wales Crime Commission 2010) and the Queensland Crime and Misconduct Commission—319 staff and \$46M budget (Queensland Crime and Misconduct Commission 2010). In Victoria the Office of Police Integrity has a \$21M budget (Office of Police Integrity 2010) and investigates allegations of police corruption, and in WA the Corruption and Crime Commission has powers concerning organised crime but they are not exercised (Crime and Corruption Commission 2010). SA, NT and Tasmania have no agencies.

markedly expanding the volume of criminal offences, laws of evidence and criminal procedure. This has led to a considerable increase in the functions pertaining to law enforcement that Commonwealth police officers can investigate.

More recently, in 2002 and 2003 a further expansion of Commonwealth policing functions occurred when under section 51 (xxxvii) of the Constitution, the States referred terrorism and organised crime criminal law powers to the Commonwealth. This action by the Commonwealth in the case of terrorism laws was described as a “federal phenomenon” (Williams 2011, 1152) by prominent legal academic George Williams. He went further and stated about the referral by the States—“The states possess considerable legislative responsibility in the field of criminal law. Nevertheless, they decided against enacting their own comprehensive anti-terror law regimes” (Williams 2011, 1152). In 2004, legislation permitting Commonwealth officers to investigate State criminal offences was also passed by the Parliament.<sup>74</sup> This was considered necessary to complement the additional functions relating to terrorism and organised crime (Ellison 2004).

### ***7.2.3 Commonwealth Leadership in Policing***

In 1980 the Commonwealth invited State and Territory governments to join a national council of police ministers. They accepted and the APMC was established and continues to operate (now titled SCPM) as the national policy making body for policing. This initiative placed the Commonwealth government on an equal footing with the States and has been critical to expanding the national government’s role in policing. In many instances the Commonwealth has played an important leadership role in the Council and this further power has been mainly generated because of its fiscal strength.

There is clear evidence the Commonwealth government from the outset wanted to play a leadership role in the Council and it has funded a range of initiatives which ensured the Commonwealth government participation became indispensable. This has resulted in nation-wide support services for police agencies

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<sup>74</sup> *Australian Federal Police and Other Legislation Amendment Act 2004 (Cth).*

being national in character and operated effectively under the auspices of the Commonwealth government.

#### **7.2.4 Key Characteristics of the Extent of Change**

The extent of change in the context of the research question is succinctly described as *nationally-integrated* and has been achieved by 2010. Paramount to the national integration has been the extent of Commonwealth involvement for this to occur, which has been demonstrated and reiterated. What is important to recognise in respect to the federalism aspect of this change are two key characteristics of the extent of growth when the Commonwealth went into the policing domain. First, this added another provider, hitherto non-existent. This is unique in the history of government service providers in the federation—especially when the States had sole ownership for over seventy years and the domain became national in character with this Commonwealth involvement.

The second factor is the time frame for change. Without doubt, for such an extent of change to occur in the space of only twenty odd years i.e. 1980–2000, is exceptional. Other areas of government services have a history since Federation of the Commonwealth trying to become involved. In most of these cases as demonstrated by the case studies on education and health, any changes have only been incremental and the extent of Commonwealth involvement only involved the policy making domains, rather than direct service provision in its own right.

### **7.3 How Policing Changed**

The extent of change to policing in Australia as described previously had a clear emphasis on the Commonwealth's initiatives since the 1980s. This has led to policing being described as *nationally-integrated*—essentially meaning some responsibilities have been centralised, others are operated concurrently and the States in many traditional areas of policing, continue to have sole responsibility. The hallmark of national integration is the few police agencies (as compared to most other nations) are operating as equals. This leads to the next part of

answering the research question—we know the extent of change, but how was it changed?

There has been a range of mechanisms used to change or *shape government activity* in the federal political setting (Hollander and Patapan 2007, 280). The literature concerning Australian federalism for the period of the 1970 to 2010, referred to in Chapter Three, shed light on how change was undertaken across government in Australia. The competing views considered many of the mechanisms used for changing or shaping the division of powers in specific areas and policy domains. Most concentrated on Commonwealth activism where the national government had led the reform and change-process in areas of service delivery across the two levels of government.

None of the literature specifically considered policing; however, it is assumed they are relevant as they characterise and describe the mechanisms used to facilitate and increase centralisation generally and the Commonwealth's role specifically. The foremost mechanisms included both those characterised as constitutional and sub-constitutional, and are considered in the context of how policing was changed. The mechanisms considered are—federal fiscal power; intergovernmental relations; and legislative mechanisms.

### **7.3.1 Federal Fiscal Power**

The fiscal power of the Commonwealth, underpinned by the fact of Vertical Fiscal Imbalance (VFI) makes the sub-national service providers bound to the Commonwealth government for funding to operate many services. In return for funding, which is usually conditional, the Commonwealth can set or influence policy in the domain. Most of the literature recognised Commonwealth fiscal power as an influence in most areas of State service delivery, which led to increased centralisation. This has not been the case for policing. Instead, the Commonwealth has used direct and untied funding to gain influence by funding the original common police services and continuing in that vein, even though they are in their new manifestations and have rebadged their titles and structures. Just as

importantly, in 2010 \$1.435bn<sup>75</sup> was provided to the Commonwealth's own agencies to fund their policing operations that placed them in a position of significance in the national policing structure.<sup>76</sup>

The Commonwealth's fiscal power continues to be an important mechanism for influencing policing and allows it to play a major role in policing operations across the nation. Primarily this is because it is the only level of government with the resources to finance the expansion of policing—in this case by increasing the scope of Commonwealth policing. Clearly, the type of funding mechanisms used in policing differs from those applied to areas like education and health services. Funding to sub-national governments in these and other areas is generally conditional and directly funds a large proportion of the service delivery operation—without Commonwealth funding these services cannot effectively operate. By contrast, in policing, it was the funding of APMC initiatives like the common services for the States and most importantly, providing police services in its own right.

### **7.3.2 Intergovernmental Relations (IGR)**

The structure of contemporary Commonwealth-State arrangements and relations has been greatly influenced by mechanisms that are centred on *intergovernmental relations* (IGR). IGR have also been described by some commentators on Australian federalism as: *collaborative federalism* (Painter 1998); *cooperative federalism* (Selway 2001; Fenna 2007a; Jones 2008; Twomey 2008; Wiltshire 2008a; Fenna 2012b); *executive federalism* (Menzies 2012; Wiltshire 2008a); and *multi-level governance* (Painter 2001).

The mechanisms are brought to life by the establishment and operation of councils and committees, made up of representatives of the members of the federation at Commonwealth and sub-national government level. Membership now includes representatives of local government and in many instances New

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<sup>75</sup> Constituted by 2009/10 AFP funding of \$1.34B (Table 5 Appendix A) and \$95M (ACC Annual Report 2009/10) in the same year for the ACC to operate—a total of \$1.434B.

<sup>76</sup> Table 5, Chart 5, Chart 11 and Chart 13 of Appendix A verify the fact of the size of the funding to the AFP has increased substantially to this point.



Zealand (as for police). Leadership is vested in national ministerial councils and their current involvement with COAG has been a feature of Commonwealth-State arrangements over the past decade. Essentially these are sub-constitutional processes that facilitate cooperation and more recently *harmonisation* (Fenna 2012b, 590) across the spectrum of government services. Participation in these national bodies has been considered by most researchers as an important feature of how change has been facilitated.

This mechanism in the case of policing can be traced back to the formative years for Commonwealth policing when the APMC was established. It continues to operate effectively. The common police services and their current manifestations evidence the use of these mechanisms. Currently, under the COAG umbrella the peak body facilitating IGR in policing is the *Standing Council on Police and Emergency Management (SCPEM)*<sup>77</sup>. Under the Council is an array of other bodies that are responsible for a range of issues that encompasses policing. As with most other areas of government service delivery, the development and use of IGR as a mechanism to achieve change has been critical for policing in Australia since 1979. The evidence is clear from the previous chapters that the Commonwealth has fostered a cooperative approach to change, garnered by consensus and resulting in the national integration of many policing functions.

In respect to any discussion of IGR, it should be acknowledged that a group of commentators take the view in the scheme of intergovernmental relations, that the Commonwealth has the propensity to be opportunistic and coercive when the circumstances arise or it has the desire to seek a specific outcome. These commentators recognise the fact that intergovernmental relations is a major aspect of contemporary federalism but are of the view that the Commonwealth at times uses this mechanism to facilitate its own agenda or impose its own policy (Painter 1998; Painter 2001; Selway 2001; Fenna 2007a; Jones 2008; Twomey 2008; Wiltshire 2008a; Fenna 2012b). The main characteristic of this approach has been conflict and resistance by the States. However, the changes (national integration

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<sup>77</sup> The Secretariat for SCPEM like the original APMC is operated by the Commonwealth Attorney-General's Department, Canberra.

and centralisation) to policing have not generally involved that type of experience. The only case that could come under this mantle was the Commonwealth led response to the *Port Arthur massacre*. The initial Commonwealth response could be classified as *coercive* but what followed was clearly cooperation between the governments to change policy.

### **7.3.3 Legislative Mechanisms**

There are a range of legislative mechanisms associated with processes and instruments of a constitutional nature. The mechanisms used to change policing have been relatively straight forward and threefold. First, the legislating of new laws pertaining to crime and prosecution of offenders, directly related to the Commonwealth's enumerated powers, has expanded the functions of its police. The most common examples have been legislation related to the external affairs, communications, border protection, finance and environment enumerated powers.

The *External Affairs* power, under section 51 (xxix) of the Constitution is the prime example of how the Commonwealth government has expanded its powers. From a political perspective this power has been used often by the Commonwealth government to intervene in the affairs of the States and in the case of policing it has been used in a range of areas related to terrorism and organised crime. It is important to recognise the simple fact that the Commonwealth powers unequivocally place many aspects of policing services outside the constitutional jurisdiction of State governments. When linked with the new and emerging crime problems that are concomitant to globalisation and internationalism of crime, this federalism influence has been integral to increasing centralisation of some functions of policing.

The second type of legislative mechanism used recently involved legislation concerning terrorism and organised crime. Legislative power was provided to the Commonwealth by the States using the referral of powers under section 51 (xxxvii) of the Constitution. In 2002 and 2003 referrals were made by the States ceding significant criminal law powers to the Commonwealth in the areas of terrorism and organised crime. Using the referral mechanism is the most unequivocal and

indisputable means to increase Commonwealth powers in a specific area and since Federation it has been rarely used. In these recent cases the referral power has been used to increase the functions of Commonwealth policing that has in some instances lessened the responsibilities of State policing.

The last aspect of this mechanism is filling legislation gaps that have come into existence because the aged constitution had not envisaged the need for enumerated powers for the Commonwealth or the States in these areas. Obvious examples relate to air navigation and aircraft, electronic technology involved with computers and communications, along with complex international financial markets. As pointed out previously the Commonwealth has passed a raft of legislation to cover new and emerging crimes and without doubt as a mechanism, this has changed policing in Australia, and importantly, facilitated a national approach.

The outstanding fact concerning legislative change has been the fact that since 1979 there has been bipartisan support at the Commonwealth level, and also apparently at the sub-national level of politics, for legislation that directly or indirectly has expanded the Commonwealth's role in policing.

#### ***7.3.4 Characterisation of How Policing Changed***

The characterisation of *how* policing changed—*nationally-integrated and Commonwealth driven*—has been detailed in the summary of mechanisms. The outcome has been two fold—greater centralisation of some areas of policing, hitherto non-existent before 1979; and shared or clear demarcation of responsibilities by State agencies. Interestingly, when the police experience is viewed in comparison with areas such as education and health, as considered in previous chapters, there are similar mechanisms involved but these were applied differently by the Commonwealth.

Fundamentally, the Commonwealth relies on tied grants to achieve its goals in most other areas of State government responsibility where it takes an interest, but in the case of policing it uses different instruments—it operates its own agency and finances support agencies. The use of IGR as a facilitating mechanism is

commonplace and important to all areas of government, including policing. While the use of legislative mechanisms is not all that well used across government, it has been a critical mechanism for the expansion of Commonwealth policing in terms of negotiating the respective changes to the scope and range of functions between the federal partners.

When viewed through the prism of federalism policing provides a different account of how change, i.e. centralisation of some functions and national integration of the operation of policing, has occurred using the normal mechanisms in the Commonwealth's armoury. Policing changed over this very short period of time—to a system of national-integration—because there was bipartisan support for change; there was cooperation between the federal partners; and change was consensual. Such hallmarks of change, according to much of the federalism literature, are unusual and seldom experienced. Clearly, a new federalism approach has emerged and deserves to be acknowledged.

## **7.4 Why Policing Changed**

Knowing what drove the shift of policing from being a strictly State or sub-national responsibility to being nationally-integrated is the essence of the thesis's hypothesis. Essentially the answer is two-fold and the first part was provided in Chapter Five where the principal drivers of change to policing were identified. These drivers directly related to the mechanisms applied to expand Commonwealth policing and in turn were responsible for changing the national policing model. They were identified as: *Spillover*; *New Commonwealth Responsibilities*; and *Economies of Scale*.

The discussion on drivers also corroborated the fact that the most critical development for Commonwealth policing occurred in 1979 when the AFP was established. This was the seminal event that heralded the determined entry into policing of the Commonwealth government. After this, the persistent growth of Commonwealth policing ensured it would take a prominent role in the national

policing domain as opposed to the insignificant and constrained role it took for the first seventy-eight years of Federation.

The other important development that drove change, initially to sub-national and then Commonwealth policing, was the changed social and in turn political environment of Australia and the western world from the 1970s. Social change led to a range of crime problems, of a volume and nature never experienced previously. Australia's isolation from the rest of the world diminished and problems arose both directly and indirectly from international sources, many in the area of crime, which had an impact on Australian society and in turn on governments. Governments' response to escalating crime problems in the main focussed on policing solutions and as a result Australian policing expanded and changed in many respects.

Strategically, the expansion of Commonwealth policing has been the result of political decisions at all levels—federalism in action. The political decisions were driven by the need for solutions to serious crime problems and threats being faced by all governments. The expansion of Commonwealth policing filled the gap that existed in respect to crime problems where the State agencies lacked jurisdiction, resources or it could be inferred the desire or political will to deal with these problems. Thus, many crime problems like cybercrime, terrorism and organised crime have evolved to become primary Commonwealth problems *vis-à-vis* State government. This attitude of the States clearly opened the door to greater Commonwealth involvement in policing.

From a federalism perspective, explaining why this change occurred to policing, one is drawn to the *pragmatic federalism* view as the experience of policing appears to have been driven by the need to solve problems once they were identified or there was a significant focusing event. In most of the cases cited in Chapter Five for instance, the Commonwealth was willing to be the *problem-solver*—the States consented, and the rest is history!

Interestingly, the approach to these new crime problems, particularly those of a national and international nature by a federal government like Australia's can

be two-fold: either allocate the responsibility to lesser government or make it a responsibility for a national agency. The decentralised approach, where the federal government leaves operational policing concerning national matters to local police is the case in many nations, including the federations of Germany and Switzerland. These nations make the laws and the States administer and enforce them. By contrast, the USA and Canada like Australia are more centralised in their approach to these aspects of policing (not necessarily in other areas) and have national police agencies retaining control and operational responsibility for these crime matters.

Clearly, Australia was in the decentralised category until 1979, but since then has become increasingly centralised with the Commonwealth government calculatingly adopting the policy to significantly increase the resources for Commonwealth policing. To undertake the change to Commonwealth policing the cooperation and consent of the States was critical. The States took the unusual action of supporting the Commonwealth's involvement in policing functions usually considered as belonging to the States. The 2002 and 2003 cases of the State governments referring criminal law powers concerning organised crime and terrorism, along with the related responsibility for criminal intelligence, to the Commonwealth government, were clear examples of spillover driving change. This led to the expansion of the scope for Commonwealth policing at the behest of governments, a situation at odds with the traditional attitude of State governments in other areas of service delivery that they jealously protect.

#### **7.4.1 Characteristics of Change**

There are two further aspects to consider in why policing became *nationally-integrated*. Firstly, in relation to federal politics and political ideologies it should be understood that the restructuring and subsequent reforms and changes to Commonwealth policing have enjoyed bipartisan political support at the Commonwealth level since 1979. Additionally, there is no evidence that at a State level this has not also been the case. The fact of bipartisan support for change should be taken into account when considering why policing became national in character.

Bipartisan support can be traced back to the political aspirations of both the Whitlam and Fraser Commonwealth governments and their common policy position on policing in the 1970s. Though politically opposed and outwardly espousing different federalism ideologies, in practice Fraser's coalition government followed the centralist lead of Whitlam. The common policy positions of the two political parties since 1979 has led to a bipartisan position at a federal level by both major parties. This current policy position is unusual in federal politics but has been a critical reason why policing changed.

The role of sub-national politics has also been integral to driving change in policing. The support by this level of government for the Commonwealth's initiatives and intrusions into policing has been an important factor in the change to the national policing structure. *Prima facie*, this is a position at odds with what would be expected in the normal operation of Australian federalism—opposition to centralisation is generally expected from the States. This uncharacteristic support for the Commonwealth was exemplified in the outcomes from the *Leaders summit on terrorism and multi-jurisdictional crime* convened on the 4 April 2002. The *Communiqué* from the summit and the agreements that emanated from it endorsed the expansion of Commonwealth policing and effectively handed over responsibility for policing of terrorism and organised crime to the Commonwealth government (see Appendix E for copies of the related documents).

The Agreements that followed explicitly recognised the *strategic leadership role* in policing that the Commonwealth government was expected to play in these two areas. From a political perspective the Summit demonstrated the States willingly passed these functions of policing to the Commonwealth, which deviates from conventional federalism orthodoxies and showed that policing has been treated differently to most other areas within the ambit of Commonwealth-State relations.

Why the States have treated policing differently in the negotiations over powers in this case has not been a topic researched to any degree. What can be speculated is there are a number of factors, some political in character, which are

worthy of consideration as they could be the reason for the States policy position.

These include:

1. Perceived budget savings because the Commonwealth agreed to take total responsibility for these areas of policing e.g. cybercrime, terrorism and organised crime;
2. Diminution of responsibility for areas of high political risk, again examples of areas concerning terrorism and organised crime are valid; and
3. New areas of responsibility taken by the Commonwealth where there is nothing to lose in terms of State responsibilities or federal funding—what you never had you cannot lose. In support of this view is the fact that the seven State and Territory agencies, according to their annual reports, were expanding and fully absorbed with their normal functions. The allocation of these new areas of criminal investigation to the Commonwealth did not take away any of their mainstream functions. The police agencies were certainly not losing any functions and it would appear taking on these new areas would be problematic as they would require additional expertise and funding.

The characteristics of change to policing in Australia can be viewed in two ways. From a political point of view it is evident that there was bipartisanship, cooperation and consensus at all levels of government, which provided a logical explanation as to why policing was able to become national in character. The State gate-keepers have been happy to let the Commonwealth drive change and this is the main reason why the paradigm shift happened.

The other way to view the change in policing is to view it from a federalism perspective and consider whether changes across the board to federalism had a hand in driving the change in policing.

## **7.5 Policing and Federalism**

As was noted in Chapter Three, which considered federalism in detail, there are a range of descriptions and explanations on how and why federalism has changed



and what effect this has had on government activities across all governments in Australia.

The answers elicited so far as to why policing changed appear straightforward—the Commonwealth government since the 1970s pursued a policy to establish Commonwealth policing as an essential component of the national policing framework and this was supported by States. A critical outcome from this was increased centralisation in respect to a number of aspects of policing. The degree of sub-national support has been generally unequivocal and many examples of this have been provided in the discussion to date.

In the history of federalism, this centralisation trend has not been unusual and the proposition can be considered that it was in the normal evolution in federalism that changed policing. So is there any credence to this conclusion and do the mainstream explanations in the federalism literature clarify why policing changed?

#### **7.5.1 Changing Federalism—Descriptions and Explanations**

The evolution of Australian federalism is reasonably well documented and there are a range of competing views as to the extent of change, how and why it changed. Clearly, much of this literature has considered parallel questions like those already asked about policing. The selected literature drawn from Chapter Three centred on descriptions and explanations about Australian federalism and their relevance and ability to explain the policing paradigm shift. Three federalism perspectives are used to explore further into the experience of policing.

#### **7.5.2 Cooperative Federalism**

As mentioned previously, *cooperative federalism* relates to the mechanism of intergovernmental relations (IGR). Other descriptors that are aligned to cooperative federalism are—*collaborative federalism* (Painter 1998); *executive federalism* (Menzies 2012; Wiltshire 2008a); and *multi-level governance* (Painter 2001). The explanations principally focus on how change took place and the use of mechanisms that are sometimes characterised as undemocratic because they allow

unelected and unaccountable government officers to operate the business of government outside the constitution's institutions i.e. parliaments. The most obvious result from this form of federalism is increased centralisation and has been described as "creeping centralism" (Twomey 2008, 57), or "centralisation by stealth" (Wiltshire 2008, 591) that "undermines the constitutional forms on which constituent units, and the union itself, were based" (Painter 2001, 149).

The effect of cooperative federalism in the day-to-day operation of governments according to the literature has been significant and is seen in a positive light by some authors as it enables the federal structure (constitutional and institutional framework) to keep up with the "profoundly different economic and social conditions" (Fenna 2012a, 40). Menzies considered this federalism characteristic allowed "intergovernmental decision-making within the context of the global economy" (Menzies 2012, 2). Regardless of the cases for and against cooperative federalism it is clear it has been around for some time and provides benefits to governments.

An important aspect of the *cooperative* approach is whether there has been pressure on the States by the Commonwealth to change and agree with federal initiatives and reforms. Obviously, cooperation is a two way street but from the evidence so far e.g. the Commonwealth's fiscal power at the APMC; and activism in the 2002 summit, it could be argued federal government resources and activism have been a powerful influence to pressure State cooperation. On the other hand it has also been shown the States negotiated positive outcomes for their jurisdictions.

The influence of *cooperative federalism* on policing is clearly demonstrable. A range of developments have emanated from cooperative institutions ranging from the APMC to the important 2002 COAG Leaders Summit on terrorism and multijurisdictional crime. Additionally, the fact that Commonwealth organisations like the ACC contain significant representation from the States demonstrates the continued influence of cooperative federalism on policing and their ability to negotiate positive outcomes.

There is clear evidence in the matters of spillover, new criminal responsibilities and economies of scale, which have shown that a significant amount of problem solving was undertaken within the confines of cooperative institutions. In the case of the shift of policing to a national structure, the *cooperative* approach was a significant influence in how this occurred.

### **7.5.3 Australian Policing as Pragmatic Federalism**

The historic transition from purely state-based policing to a much more nationally-integrated approach with a considerable Commonwealth government role has exhibited a very different character from the centralising trends in other policy fields such as health and education. In those fields, there is abundant evidence of coercive and opportunistic federalism, with the Commonwealth using “its fiscal and constitutional superiority to implement its own agenda” (Jones 2008, 7). With policing, by contrast, a pragmatic adjustment to the emergence of new problems has indeed occurred.

The basis of the argument is the Commonwealth is taking more responsibility for problem solving in respect to emerging issues and problems that have an impact across the whole of the nation. It was clear in the discussion the drivers of *Spillover* and *New Commonwealth Responsibilities*, new crime problems were being addressed by the Commonwealth and the State governments were cognisant but chose to be inactive.

The foundation of *pragmatic federalism* is that change comes about within the tiers of government as a result of *problems being defined* and *solutions being required* (Hollander and Patapan 2007, 291). In the case of policing this led to Commonwealth activity in areas traditionally reserved for sub-national governments i.e. the criminal law and the enforcement of those laws. The best examples in support of this view are provided in recent cases of State criminal law powers being ceded to the Commonwealth government and in other instances of expanded Commonwealth criminal law and policing powers.

Another means of supporting the argument that crime problems were important drivers of policing change is to consider a number of events (some could be classified as focusing events) and actions by government since 1978, which sought solutions through Commonwealth government involvement. These events were responsible for changing key aspects of Australian policing and when viewed through the lens of problem solving, the outcomes were predictable. The examples used to support the argument represent significant events affecting Australia that required governments to come up with solutions to some very serious problems. Figure 7.3 outlines the matters for consideration.

**Figure 7.3: Events affecting Policing 1978–2007**

Year	Event	Action
1978	Sydney Hilton Bombing	Mark review commissioned, with recommendations resulting in AFP, APMC, National Counter Terrorist Plan and Common National Police Services being established.
1980	Woodward and Williams Royal Commission Inquiry into Drugs and Organised Crime	NCA established. ABCI established. AFP investigation powers and role in the investigation of organised crime mandated.
1996	Port Arthur Massacre and national gun control	APMC special meeting established national gun control policy and uniform national laws with Commonwealth funded gun buyback.
1999	East Timor Intervention	Federal Police peace keeping force requested by the UN and AFP provided a force.
2001/02	9/11 and Bali Bombing	Preeminent national counter terrorist role given to AFP. National laws and related criminal law power referred by States to the Commonwealth government. National terrorism and counter-terrorism investigation responsibility allocated to AFP.
2007	NT Intervention	Evidence of child sex crime, domestic and family violence being committed in aboriginal communities in the NT. New Commonwealth laws created for enforcement by police in NT. AFP and NT police resourced to enforce Commonwealth laws.

The list of events demonstrated government action was *problem driven* once the problem has been identified, and fits with the Hollander and Patapan hypothesis. The need for problem solving has also increased since the 1980s because of globalisation and the inordinate amount of crime problems emanating from this phenomenon of an international nature. Constitutionally, the Commonwealth government is the primary responder to problems of this nature because of its *external affairs* power. The States can deal with *international* matters only if invited by the Commonwealth or at the very least in a manner the Commonwealth determines. Consideration of these events exemplifies the effectiveness of pragmatic solutions and the fact that this explanation of federalism in action explains the change in policing.

An important point to note about this discussion is that the pragmatic federalism explanation may not necessarily relate to every area of government activity. Fenna (2012b) argues that pragmatic federalism could not be attributed as a change process for all domains of government activity—there is credence in the theory, but it may only be relevant to some individual domains. If policing is one of those domains, we need to establish the ways in which it differs from those other policy fields such that the more national dimension has been established so smoothly and pragmatically. Those differences seem clear: none of the developments have involved any intrusion into traditional areas of state policing responsibility. Nationalisation has been a process complementing the traditional state role and providing solutions for entirely new challenges that transcend State boundaries and exceed state capacities.

## 7.6 Summary

Both *cooperative federalism* and *pragmatic federalism* have been identified as providing a description and an explanation respectively, on the change to policing. They complement each other and have been a foil to the Commonwealth's coercive/opportunistic approach to the States. This is not to say that from time-to-time unilateral decision making is not required from the Commonwealth. As seen over the past years, at times Commonwealth leadership is essential to address

problems beyond the capacity of the States or where they do not want to take responsibility. The important examples of the *gun and national firearms control* case, terrorism laws, organised crime laws and the NT intervention demonstrated how and why the Commonwealth must have the ability to centralise power in some cases, based upon what it considers to be in the national interest.

What should be noted in all of the cases mentioned is in every instance the cooperative nature of federalism afforded all of the sub-national governments some input into the final outcomes. There was and continues to be the ability by the States to negotiate outcomes. Some critics will dispute this but the evidence of policing has clearly demonstrated the Commonwealth's approach to federalism is not a one-way street.

Understanding *pragmatic federalism* has afforded a viable explanation of the change to policing, as *problem-solving* beyond the capability and jurisdiction of the States requires the higher level of government to take responsibility.

Cooperative federalism along with pragmatic federalism appears to describe and explain some aspects of change, but they are not complete explanations. This begs the question—is there another type of federalism that fully explains the change? Perhaps considering the outcomes from the previous chapters can assist in answering the question.

Chapter Three discussed Australian federalism and how after the Whitlam era change had occurred in federalism that affected all areas and levels of government. Overall, there was a centralism trend and this was also the case for policing, like many other areas previously a sole State responsibility. The chapter discussed several competing descriptions and explanations of federalism to explain change and the most relevant for policing appeared to be cooperative and pragmatic federalism. At this stage both had weight and the following chapters needed to test them against the policing experience since the 1970s.

Chapter Four focussed on the change to policing and concluded a paradigm change had occurred in policing since the formation of the AFP, and it had become nationally integrated with the Commonwealth expanding its role in policing with

the support of the States. The key facts of the change were that it was Commonwealth driven yet done cooperatively and was motivated by the need to solve new and emerging crime problems. Explaining what drove change led to the next chapter.

Chapter Five concluded that the main drivers of change to policing all had relevance to federal powers and the paradigm change in crime in Australia. High levels of national and international crime now required federal involvement in State matters. Thus, the Commonwealth was the primary leader of change with the States allowing federal expansion and even giving up responsibilities for areas of criminal law by constitutional means. From a federalism perspective it was clear that change was undertaken by cooperative means and problem solving was driving change.

Chapter Six sought to compare the Australian experience of policing with four other similar western federations and the conclusion was they had similar policing experiences. From the perspective of federalism there was a centralisation trend to varying degrees. Rapid changes to crime in all of these countries required the expansion of federal policing and clearly cooperation between levels of levels of government was important to implement change.

All of the conclusions have cited centralisation and all levels of government working together to be common in change to policing. The important fact about this observation as ascertained in the previous analysis is the States since the 1980s have continued to support the Commonwealth's expansion into policing. This State support is based on pragmatism. For instance, Australia like other western nations has been greatly impacted by globalisation and in particular in the case of policing, the internationalisation of crime—and the best means to deal with the problems is through national institutions and structures. This view is certainly supported by the experience of policing in some other federal nations, detailed in Chapter Six. However, to actually implement change there must be effective mechanisms in place for this to occur and what is evident from the other chapters is cooperation between the Commonwealth and States facilitated change.

The conclusion drawn from the discussion was that federalism has played a major role in change, yet it appears in the case of policing there is not one similar federalism case study to explain how and why it occurred. As mentioned previously, the proposition put forward is by means of *cooperative federalism* change was undertaken and this was driven by the need for the federal partners to solve pressing crime problems. This proposition recognises the importance of aspects of both cooperative and pragmatic federalism. However, it is not an absolute explanation because there have been other experiences and policy decisions unique to policing.

The characteristics of policing in the federal environment are now the Commonwealth and the States operate as equals and negotiate demarcations in some cases, while operating concurrently in many other areas. The hallmark of this approach to federalism is Commonwealth policing shares the work as an equal with State agencies and by amicable negotiation the governments have allocated responsibilities for policing across the nation. This is how federalism has worked for policing and changed it to be increasingly centralised and overall nationally integrated.

## **7.7 Conclusion**

Since Federation and particularly after 1979, Australian policing when viewed as a model in the context of government services has changed to such a degree, that the extent of the change is best described as a paradigm shift. Originally modelled on colonial policing and treated solely as a State responsibility until 1979, effective change began in that year when the Commonwealth implemented a 1976 policy decision to provide its own policing services. Change was driven by the Commonwealth government and unusually enjoyed bipartisan support in the parliament to establish a fully effective Commonwealth policing agency.

Interestingly, up to 1972 the two main parties took diametrically opposed views on Commonwealth policing and these were the reverse of their usual ideological positions. Labor opposed every attempt to establish Commonwealth



policing agencies while conservative-coalition governments passed legislation in this area in 1919, 1925 and 1957, against fervent Labor opposition. The reason for change to the Labor policing policy, first espoused in 1972 by aspiring Prime Minister Gough Whitlam in his electioneering, was never articulated or actually resulted in any change. Several years on a more systematic approach was taken by the Fraser coalition government that included a formal policy development process and resulted in a Cabinet approved policing policy in 1976 (NAA 2012b and c), which in essence has remained unaltered to the present.

The new Commonwealth policy developed a mainstream national police agency to undertake all police business for the Commonwealth government and to place that agency on an equal footing with the sub-national agencies. Commonwealth policing came of age after the formation of the AFP in 1979 and has prospered to the point where in 2010 the AFP was arguably the third equal largest police agency in Australia, and is still prospering. It has to be noted in the context of Commonwealth expansion, the seven subnational agencies also grew substantially and at a greater rate than population growth, but overall at a lower rate than their federal counterpart.

The major factor behind the expansion of police agencies was the increase in crime across Australia in respect to the size and complexity of the problems. Traditional policing structures and arrangements between governments and police agencies in the 1970s were clearly inadequate and could not effectively respond to all of the crime problems. The solution advocated and actioned by the Commonwealth government was to provide its own agency as a problem solver for many of the new crime problems emerging across the nation. What followed after 1979 was the deliberate expansion of the Commonwealth's role in policing, which was the beginning of a concerted effort to carve out a role for the national government.

This formative change in policing led to policing developing as a national policy domain and being nationally integrated, *vis-à-vis* being a solely State government responsibility. Commonwealth policing has continued to grow in terms of scope and range of functions and more recently in 2002 and 2003 undertook

additional responsibility for policing terrorism and organised crime. These areas of policing, with the consent and encouragement of the States, become prime responsibilities for the Commonwealth and its criminal law. This addition to Commonwealth policing responsibilities was done in an unusual manner for such an undertaking of a political nature in the context of federal relations. Voluntarily, the States expanded Commonwealth policing by using formal constitutional means to assign responsibility for terrorism and organised crime to the Commonwealth Parliament.

Along with terrorism and organised crime, some other high-end changes to Commonwealth policing took place from the 1990s involving a range of areas of police functions being undertaken by Commonwealth policing to fill the gaps that State governments' were unwilling to undertake because of a range of reasons—principally that they lacked jurisdiction, resources or the political will to take on such responsibilities. The development of cybercrime and the policing response well-illustrated how many emerging crime problems, as a matter of practice, by default are now left to Commonwealth policing.

The result of all of this is that Australian policing underwent a paradigm shift after 1980. A new federalism approach, combining both old and new aspects of contemporary approaches manifested change. This approach to federalism was characterised by cooperative processes for problem solving and the States negotiating a role for the Commonwealth as a service provider in its own right. This facilitated policing becoming truly national in character and no longer a State responsibility, as envisaged by the founders of the Constitution.

The success of the Commonwealth's policy to expand its role in policing has relied on the unusual position of the States supporting the program of change and reform. This approach to policing by the States can only be described as inconsistent with the way the States normally defend their control of their service domains. The ongoing conflict between the Commonwealth and the States over similar issues surrounding centralisation in other areas such as education and health is unrelenting and was a continuous theme in the previous chapter on Australian federalism. It is a feature of federalism that has been associated with

the relationships between governments since Federation. Why then has the experience of policing in this area been so different?

The conclusion drawn from discussion in this and the previous chapters is that the expansion of Commonwealth policing was green-lighted by the States primarily because of the nature of the crime problems faced. The inference is drawn that the problems were not addressed locally for they were seen as a Commonwealth responsibility based on the view of the States—conveniently yet inconsistently with the position taken in other domains, they lacked the jurisdiction and resources to deal with the problems. Pragmatism won out over sovereignty and there are absolutely no indications that this concerted policy approach to policing by the States will change. Importantly, however, the States retained policy and operational influence, and kept control over most of their core functions.

The model of Australian policing is now more centralised, nationally integrated and the Commonwealth government has taken a position of leadership. Commonwealth policing is well on its way to taking a position of prominence and that can be attributed to a unique situation—the development of a new approach to allocating policing responsibilities. Implicit in all of these changes has been consensus by the States to the Commonwealth becoming an equal partner, allowing it to centralise some functions and cooperating in policing becoming nationally integrated.

From a federalism perspective, the final question is whether normative federalism notions can explain the case of policing since 1970. To a degree they do, however it is argued that the case study of policing clearly identifies a new way of doing business between the federal partners. The usual combative approach to change between the federal partners has been missing in the councils, committees and summits. Australian policing has changed significantly since 1970 and this has been undertaken differently than would be expected in the normal course of Commonwealth-State relations. This has been a new and interesting experience for Australian federalism—the new policing model demonstrates change can be done in another way.

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## Appendices

Appendix Subject	Content
<b>A Statistics</b>	This provides a number of statistical analyses in respect to policing using specific data on personnel and funding in respect to the eight Australian police agencies. In addition a number of comparative statistical analyses are provided, which use Consumer Price Index (CPI) and Population data as it relates to the two policing data sets. A range of tables and charts in the Appendix are used in various chapters of the thesis.
<b>B Colonial Policing</b>	This concerns Colonial Policing in Australia and explains the background to post-Federation policing. This is important as the highly centralised nature of Australian policing is the direct product of the development and reforms related to colonial policing.
<b>C Statutory Provisions of Australian Police Agencies</b>	This details the current statutory provisions relating to the functions of Australian police agencies.
<b>D Commonwealth Criminal Law</b>	This is a summarised history of Commonwealth criminal law reform from 1980 to 2010 and is derived from current a Parliamentary Library electronic document concerning the "History of criminal law" (Parliament of Australia 2013).
<b>E Terrorism and Organised Crime Inter-government Agreements</b>	This provides copies of three documents referred to in a number of chapters. They are: Communique from Leaders Forum 4 April 2002 Agreement 5 April 2002 Agreement 25 June 2004
<b>F National Archive Documents</b>	These NAA documents are key documents and referred to in most chapters and are provided for ease of reference as access to the documents can be difficult and time consuming.

***Appendix A***

**Australian Policing Statistics**

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## **A1 INTRODUCTION**

The Appendix provides many of the statistics used in the main body of the thesis and they relate to two key areas pertaining to the operation of Australian police agencies:

- (i) Personnel—concerns the employment of Personnel by police agencies; and
- (ii) Funding—concerns funding provided annually by governments' for police agencies.

As policing is a government service in Australia, the data collected originated from the eight governments which operate police agencies. The data was sourced directly from agency and government documents. There are two independent agencies charged with collecting statistics concerning government agencies and their products have been a major source for the data and information contained in the appendix. The statistics concern the eight public police agencies, namely:

- 7. Australian Federal Police (AFP)
- 8. New South Wales Police Force (NSWPOL)
- 9. Northern Territory Police Force (NTPOL)
- 10. Queensland Police Service (QPOL)
- 11. South Australia Police (SAPOL)
- 12. Tasmania Police Service (TASPOL)
- 13. Victoria Police Force (VICPOL)
- 14. Western Australia Police Force (WAPOL)

The two independent research agencies from which data was accessed are:

- Australian Bureau of Statistics (ABS); and
- Commonwealth Productivity Commission (CPC).

## **A2 BACKGROUND TO THE COLLECTION OF POLICE AGENCY STATISTICS**

There are currently eight police agencies in Australia; six state police agencies existed as colonial forces at Federation in 1901 while the Northern Territory agency was formed in 1931. The AFP is the newest agency and was established in 1979 by Commonwealth legislation and provides policing for the Commonwealth Government, Australian Capital Territory (ACT) and other territories except the Northern Territory.

Statistics and the collection of the relevant data and information, like the study of Australian policing were virtually non-existent from Federation to the 1970s. The collection and analysis of statistics to underpin the knowledge base for policing has only developed momentum since the 1990s. In respect to the period for study, 1970–2010, there have been two identifiable periods for the availability of statistics:

1. 1970–1993
2. 1993–2010

In the first period the only source of statistics on a national basis for all the agencies was the Commonwealth Year Book series published by the ABS. This provided a compilation of statistics concerning personnel and limited information on expenditure by the agencies. In 1995 the CPC published its first annual *Report on Government Services* (ROGS) which provided the first uniform and national series to focus on policing. This provided a credible series of statistics concerning police agency personnel and funding, which continues to be a major source for research on policing in Australia.

Other sources of statistical data and information available included:

1. Federal, state and territory budget papers
2. Agency annual reports
3. AFP publication “The first thirty years”, chapter seven: Key Facts 1979–2009 (AFP 2009).

The two specific areas used for the general analysis of policing on a national basis are:

1. Personnel, the human resource inputs into this labour intensive business;
2. Government Funding, as policing does not generate income.

The specific sources of data for these two statistical areas are provided as a footnote to the main tables. Also used for comparative purposes are population and consumer price index (CPI) information, both derived from official government sources.

### **A3 TABLES AND CHARTS**

The collection of tables and charts are based upon the information provided by the respective sources identified previously. There are 12 tables and 13 charts

### A3.1 PERSONNEL STATISTICS

The sources of these statistics are — State and Territory Police data derived from two sources: *Report on Government Services* (ROGS), Police Services attachments; and *Year Book Australia*. Data sourced for individual years as follows:

3. 1980/81: 1982 Year Book, 226
4. 1981/82–1983/84: 1985 Year Book, 234
5. 1984/85–1985/86: 1988 Year Book, 446
6. 1986/87–1988/89: 1992 Year Book, 340
7. 1989/90: 1994 Year Book, 349
8. 1990/91–1992/93: 1995 Year Book, 351
9. 1993/94–1996/97: ROGS 1997, 11A.2 Police Services Attachment, All jurisdiction data, 686 - 693
10. 1997/98–2000/02: ROGS 2003, 5A Police services attachment, 5A.1 Descriptors
11. 2002/03: ROGS 2004, 5A Police services attachment, 5A.1.
12. 2003/04–2009/10: ROGS 2011, 6A Police services attachment, 6A.1.

Australian Federal Police (AFP) data derived as follows:

13. 1980/81–2007/08: The First Thirty Years, chapter 7, Key Facts, 1979-2009 (AFP 2010, Australian Federal Police 2009)
14. 2008/09 and 2009/10: AFP Annual Report 2010 (Australian Federal Police 2010)

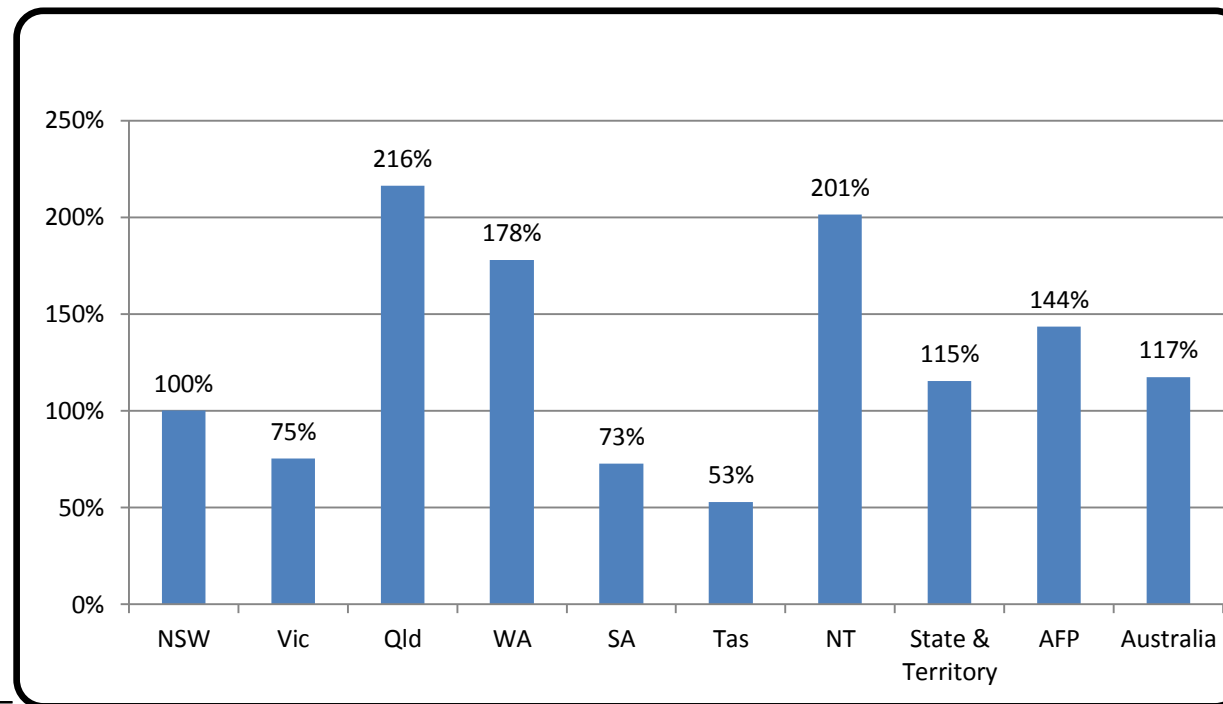
**Table 1: Australian Police Agencies Personnel 1980/81–2009/10**

<b>Personnel</b>	<b>1980-81</b>	<b>1981-82</b>	<b>1982-83</b>	<b>1983-84</b>	<b>1984-85</b>	<b>1985-86</b>	<b>1986-87</b>	<b>1987-88</b>	<b>1988-89</b>	<b>1989-90</b>
<b>NSW</b>	9468	9388	9797	10432	10608	10743	11608	12280	12568	12903
<b>Vic</b>	8196	8329	8499	8507	8444	8732	8796	9229	9678	9443
<b>Qld</b>	4554	4543	4869	4686	4775	4872	5072	5085	5219	5524
<b>WA</b>	2656	2693	2824	2888	2890	3168	3287	3243	3572	3751
<b>SA</b>	3220	3249	3297	3286	3373	3493	3646	3549	3564	3424
<b>Tas</b>	1029	1041	1006	1009	1019	1025	1010	1028	1075	1072
<b>NT</b>	543	566	634	640	662	669	681	748	746	708
<b>State &amp; Territory</b>	29666	29809	30926	31448	31771	32702	34100	35162	36422	36825
<b>AFP</b>	2395	2702	2490	2467	3308	3113	3186	3368	3188	3118
<b>Australia</b>	32061	32511	33416	33915	35079	35815	37286	38530	39610	39943

<b>Personnel</b>	<b>1990-91</b>	<b>1991-92</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
<b>NSW</b>	13203	12593	12971	15963	16509	16509	17014	17421	17260	16868
<b>Vic</b>	9726	9877	9954	12053	12181	12429	12215	11824	11598	11456
<b>Qld</b>	5895	6271	6377	7858	8220	8464	8882	9478	9765	7319
<b>WA</b>	3994	4107	4211	5147	5255	6099	6157	6114	6047	5900
<b>SA</b>	3535	3673	3782	4354	4276	4080	4021	4147	4293	4432
<b>Tas</b>	993	1018	1025	1357	1381	1384	1438	1440	1411	1407
<b>NT</b>	693	669	694	904	948	1018	1036	1078	1055	1091
<b>State &amp; Territory</b>	38039	38208	39014	47636	48770	49983	50763	51502	51429	48473
<b>AFP</b>	3217	3154	3060	2949	2963	2772	2667	2549	2601	2638
<b>Australia</b>	41256	41362	42074	50585	51733	52755	53430	54051	54030	51111

<b>Personnel</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>Percentage</b>
<b>NSW</b>	16951	17735	18059	18921	18503	18570	19311	18822	19153	18955	<b>100%</b>
<b>Vic</b>	11739	12148	12514	12764	13035	13445	13686	13755	13901	14380	<b>75%</b>
<b>Qld</b>	10855	11193	11407	11701	11950	12370	12900	13570	14222	14406	<b>216%</b>
<b>WA</b>	5945	5957	5954	6013	6172	6353	6523	7016	7474	7379	<b>178%</b>
<b>SA</b>	4557	4681	4745	4698	4861	5088	5140	5333	5431	5565	<b>73%</b>
<b>Tas</b>	1421	1453	1446	1482	1504	1560	1598	1613	1602	1573	<b>53%</b>
<b>NT</b>	1120	1160	1157	1239	1340	1386	1391	1464	1587	1637	<b>201%</b>
<b>State &amp; Territory</b>	52588	54327	55282	56818	57365	58772	60549	61573	63370	63895	<b>115%</b>
<b>AFP</b>	2851	3051	3496	3653	3601	4178	4695	5257	5113	5833	<b>144%</b>
<b>Australia</b>	55439	57378	58778	60471	60966	62950	65244	66830	68483	69728	<b>117%</b>

**Chart 1: Australian Police Agencies Personnel Growth 1980/81–2009/10**

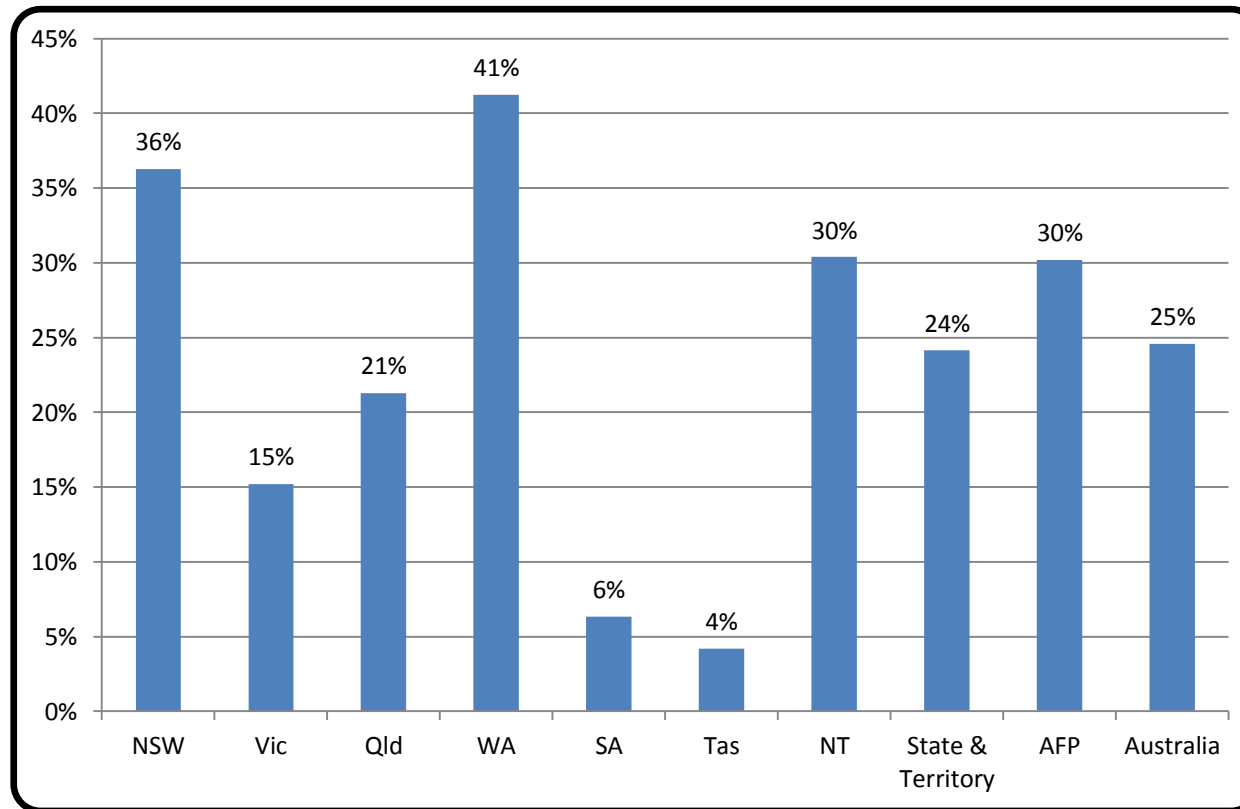




**Table 2: Australian Police Agencies Personnel Growth 1980/81–1989/90**

<b>Personnel</b>	<b>1980-81</b>	<b>1981-82</b>	<b>1982-83</b>	<b>1983-84</b>	<b>1984-85</b>	<b>1985-86</b>	<b>1986-87</b>	<b>1987-88</b>	<b>1988-89</b>	<b>1989-90</b>	<b>Percentage</b>
<b>NSW</b>	9468	9388	9797	10432	10608	10743	11608	12280	12568	12903	<b>36%</b>
<b>Vic</b>	8196	8329	8499	8507	8444	8732	8796	9229	9678	9443	<b>15%</b>
<b>Qld</b>	4554	4543	4869	4686	4775	4872	5072	5085	5219	5524	<b>21%</b>
<b>WA</b>	2656	2693	2824	2888	2890	3168	3287	3243	3572	3751	<b>41%</b>
<b>SA</b>	3220	3249	3297	3286	3373	3493	3646	3549	3564	3424	<b>6%</b>
<b>Tas</b>	1029	1041	1006	1009	1019	1025	1010	1028	1075	1072	<b>4%</b>
<b>NT</b>	543	566	634	640	662	669	681	748	746	708	<b>30%</b>
<b>State &amp; Territory</b>	29666	29809	30926	31448	31771	32702	34100	35162	36422	36825	<b>24%</b>
<b>AFP</b>	2395	2702	2490	2467	3308	3113	3186	3368	3188	3118	<b>30%</b>
<b>Australia</b>	32061	32511	33416	33915	35079	35815	37286	38530	39610	39943	<b>25%</b>

**Chart 2: Australian Police Agencies Personnel Growth 1980/81–1989/90**

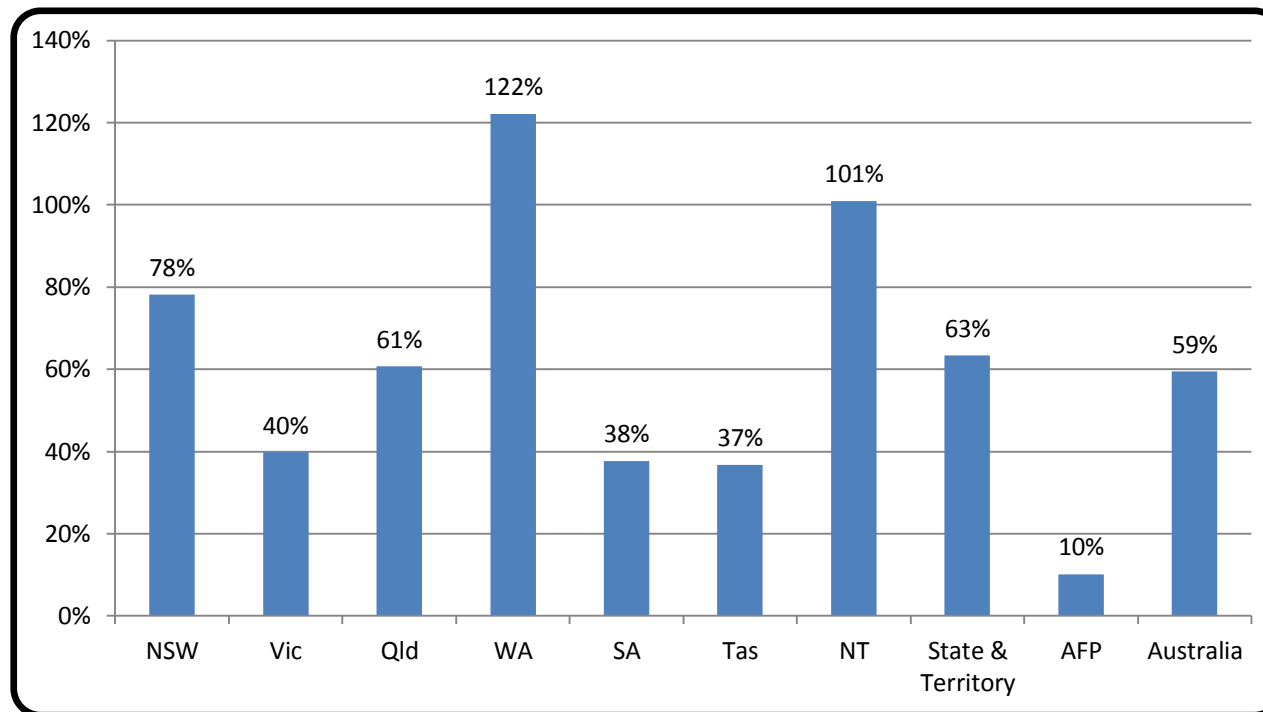


**Table 3: Australian Police Agencies Personnel Growth 1980/81–1999/2000**

Personnel	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
NSW	9468	9388	9797	10432	10608	10743	11608	12280	12568	12903
Vic	8196	8329	8499	8507	8444	8732	8796	9229	9678	9443
Qld	4554	4543	4869	4686	4775	4872	5072	5085	5219	5524
WA	2656	2693	2824	2888	2890	3168	3287	3243	3572	3751
SA	3220	3249	3297	3286	3373	3493	3646	3549	3564	3424
Tas	1029	1041	1006	1009	1019	1025	1010	1028	1075	1072
NT	543	566	634	640	662	669	681	748	746	708
State & Territory	29666	29809	30926	31448	31771	32702	34100	35162	36422	36825
AFP	2395	2702	2490	2467	3308	3113	3186	3368	3188	3118
Australia	32061	32511	33416	33915	35079	35815	37286	38530	39610	39943

Personnel	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	Percentage
NSW	13203	12593	12971	15963	16509	16509	17014	17421	17260	16868	<b>78%</b>
Vic	9726	9877	9954	12053	12181	12429	12215	11824	11598	11456	<b>40%</b>
Qld	5895	6271	6377	7858	8220	8464	8882	9478	9765	7319	<b>61%</b>
WA	3994	4107	4211	5147	5255	6099	6157	6114	6047	5900	<b>122%</b>
SA	3535	3673	3782	4354	4276	4080	4021	4147	4293	4432	<b>38%</b>
Tas	993	1018	1025	1357	1381	1384	1438	1440	1411	1407	<b>37%</b>
NT	693	669	694	904	948	1018	1036	1078	1055	1091	<b>101%</b>
State & Territory	38039	38208	39014	47636	48770	49983	50763	51502	51429	48473	<b>63%</b>
AFP	3217	3154	3060	2949	2963	2772	2667	2549	2601	2638	<b>10%</b>
Australia	41256	41362	42074	50585	51733	52755	53430	54051	54030	51111	<b>59%</b>

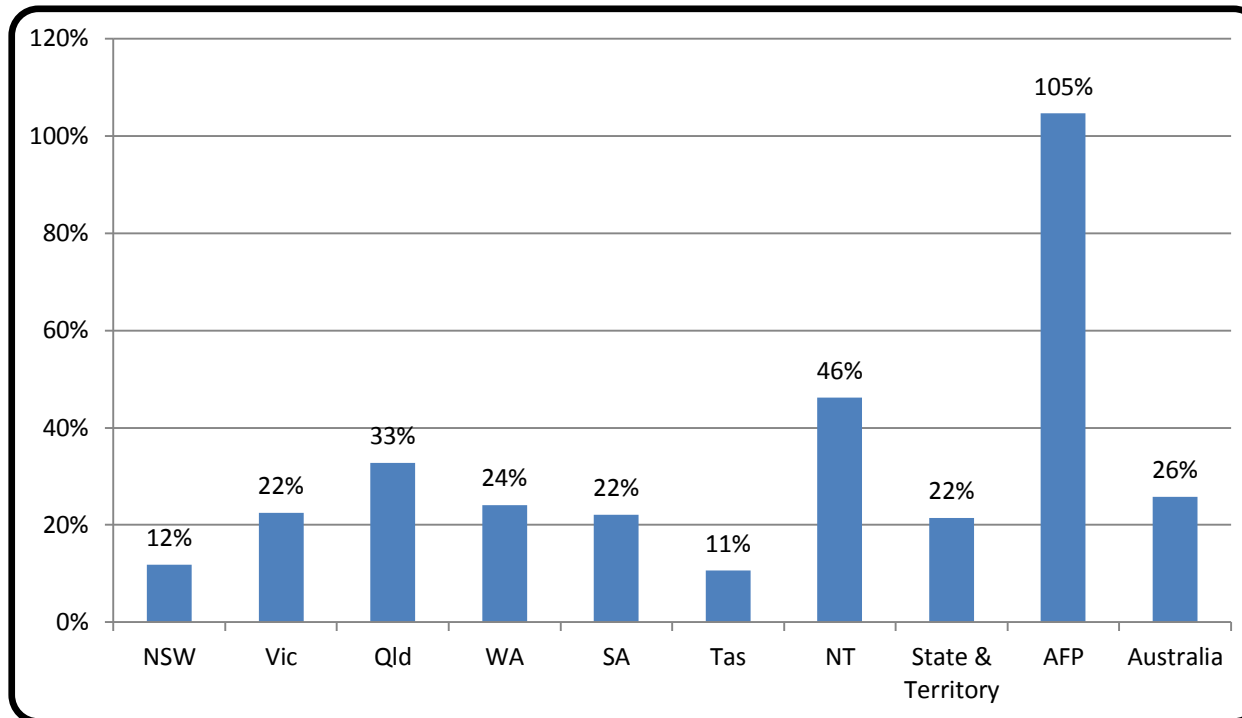
**Chart 3: Australian Police Agencies Personnel Growth 1980/81–1999/2000**



**Table 4: Australian Police Agencies Personnel Growth 2000/01–2009/10**

Agency	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Percentage
NSW	16951	17735	18059	18921	18503	18570	19311	18822	19153	18955	12%
Vic	11739	12148	12514	12764	13035	13445	13686	13755	13901	14380	22%
Qld	10855	11193	11407	11701	11950	12370	12900	13570	14222	14406	33%
WA	5945	5957	5954	6013	6172	6353	6523	7016	7474	7379	24%
SA	4557	4681	4745	4698	4861	5088	5140	5333	5431	5565	22%
Tas	1421	1453	1446	1482	1504	1560	1598	1613	1602	1573	11%
NT	1120	1160	1157	1239	1340	1386	1391	1464	1587	1637	46%
State & Territory	52588	54327	55282	56818	57365	58772	60549	61573	63370	63895	22%
AFP	2851	3051	3496	3653	3601	4178	4695	5257	5113	5833	105%
Australia	55439	57378	58778	60471	60966	62950	65244	66830	68483	69728	26%

**Chart 4: Australian Police Agencies Personnel Growth 2000/01 – 2009/10**



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### A3.2 AUSTRALIAN POLICING FUNDING STATISTICS

**Source:**

- State and Territory Police data derived from Report on Government Services (ROGS)

Police Services as follows:

1993/94–1995/96: ROGS 1997, 11A.2 Police Services Attachment, All jurisdiction data

1996/97: ROGS 1998, 5A Police services attachment, 5A.2 Descriptors, 285 - 293

1997/98: ROGS 1999, 6A Police services attachment, 6A.1 Descriptors, 410-425

1998/99–2002/03: ROGS 2004, 5A Police services attachment, 5A.1 Descriptors.

Note: 1988/89 NT Police data derived from ROGS 2003, 5A Police services attachment, 5A.1 Descriptors, Table 5A.8

2003/04: ROGS 2005, 5A Police services attachment, 5A.1 Descriptors

2004/05–2009/10: ROGS 2011, 6A Police services attachment, 6A.1 Descriptors

- Australian Federal Police (AFP) data derived as follows:

1993/94–2007/08: The First Thirty Years, chapter 7, Key Facts, 1979-2009 (Australian Federal Police 2009)

2008/09 and 2009/10: AFP Annual Report 2010 (Australian Federal Police 2010)

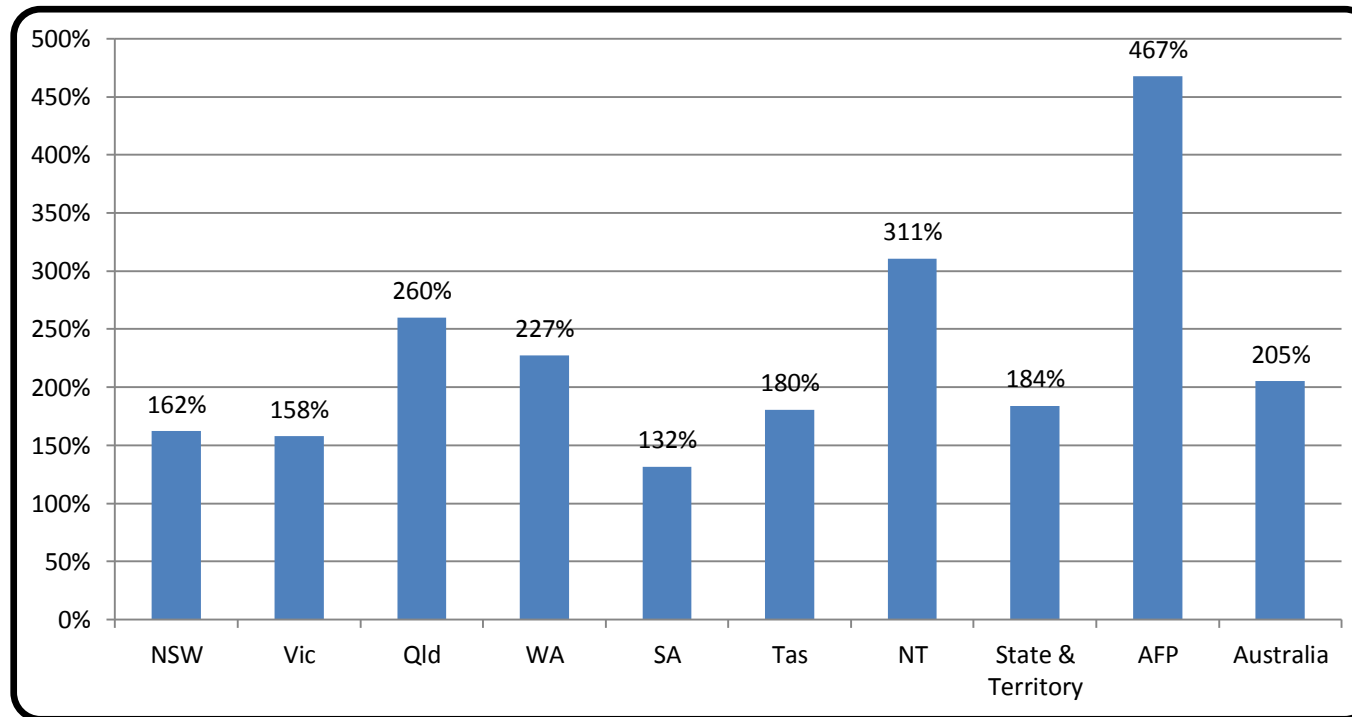
**Table 5: Australian Police Agencies Funding Growth 1993/94–2009/10**

<b>Funding \$m</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>
<b>NSW</b>	1032.63	1120.614	1180.445	1212.478	1263.324	1523.2	1448.6
<b>Vic</b>	714.635	877.591	974.08	1007.541	976.468	1051.7	1067.7
<b>Qld</b>	464.376	497.277	580.85	597.146	628.455	665.7	767.4
<b>WA</b>	311.292	315.671	363.329	401.69	425.163	383.9	492.6
<b>SA</b>	284.903	297.877	310.547	312.698	288.017	314.1	342.8
<b>Tas</b>	72.055	76.522	83.464	90.089	95.333	100.6	100.7
<b>NT</b>	63.278	68.323	76.949	79.666	89.457	91.1	99.7
<b>State &amp; Territory</b>	2943.169	3253.875	3569.664	3701.308	3766.217	4130.3	4319.5
<b>AFP</b>	237.078	274.835	245.227	281.427	278.43	274.878	353.806
<b>Australia</b>	3180.247	3528.71	3814.891	3982.735	4044.647	4405.178	4673.306



<b>Funding \$m</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>Percentage</b>
<b>NSW</b>	1637.8	1597.3	1798.7	1885.3	1940.9	2092.4	2282.9	2448.3	2543.9	2707	<b>162%</b>
<b>Vic</b>	1031.2	1097.9	1186.8	1251.6	1332.9	1469.1	1543.9	1619.2	1709.1	1842.5	<b>158%</b>
<b>Qld</b>	815.1	882.9	936.8	1009.8	1053.3	1183.9	1279.6	1416.2	1526.9	1672.1	<b>260%</b>
<b>WA</b>	488	538.4	570.5	616.7	676.9	718.3	791.9	861.2	958.2	1019	<b>227%</b>
<b>SA</b>	365.7	393.6	426.5	428.5	480.8	517.7	543.9	595.8	643	659.8	<b>132%</b>
<b>Tas</b>	104.1	114.3	120	114.5	138.8	150.5	162.5	177.2	186.6	202.1	<b>180%</b>
<b>NT</b>	102.7	117.5	126.3	146.4	158.7	174.6	187.2	211.6	240.6	259.9	<b>311%</b>
<b>State &amp; Territory</b>	4544.6	4741.9	5165.6	5452.8	5782.3	6306.5	6791.9	7329.5	7808.3	8362.4	<b>184%</b>
<b>AFP</b>	370.603	408.584	584.19	676.259	801.95	909.27	1094.303	1252.694	1242.458	1345.338	<b>467%</b>
<b>Australia</b>	4915.203	5150.484	5749.79	6129.059	6584.25	7215.77	7886.203	8582.194	9050.758	9707.738	<b>205%</b>

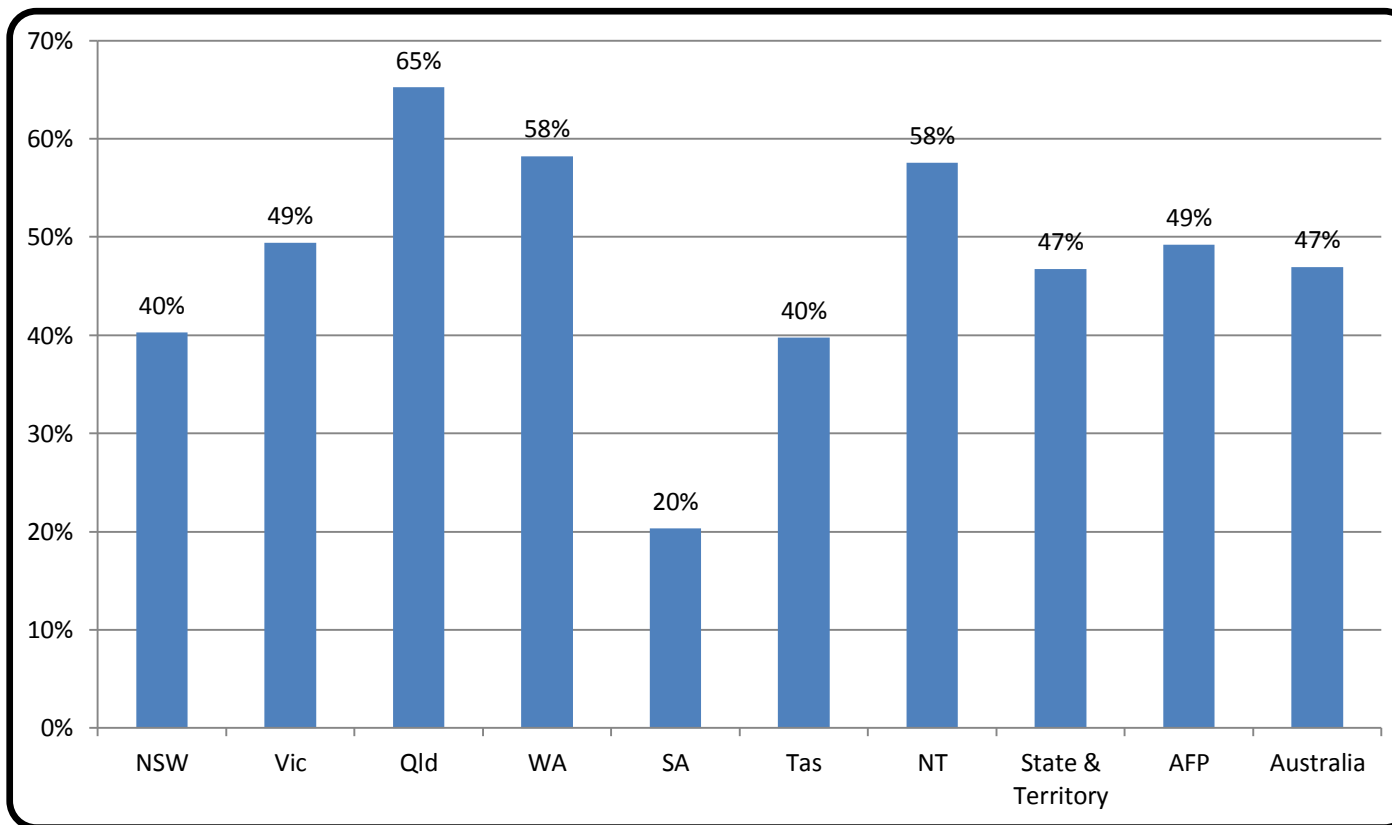
**Chart 5: Australian Police Agencies Funding 1993/94 – 2009/10**



**Table 6: Australian Police Agencies Funding Growth 1993/94–1999/2000**

<b>Funding \$m</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>	<b>Percentage</b>
<b>NSW</b>	1032.63	1120.614	1180.445	1212.478	1263.324	1523.2	1448.6	40%
<b>Vic</b>	714.635	877.591	974.08	1007.541	976.468	1051.7	1067.7	49%
<b>Qld</b>	464.376	497.277	580.85	597.146	628.455	665.7	767.4	65%
<b>WA</b>	311.292	315.671	363.329	401.69	425.163	383.9	492.6	58%
<b>SA</b>	284.903	297.877	310.547	312.698	288.017	314.1	342.8	20%
<b>Tas</b>	72.055	76.522	83.464	90.089	95.333	100.6	100.7	40%
<b>NT</b>	63.278	68.323	76.949	79.666	89.457	91.1	99.7	58%
<b>State &amp; Territory</b>	2943.169	3253.875	3569.664	3701.308	3766.217	4130.3	4319.5	47%
<b>AFP</b>	237.078	274.835	245.227	281.427	278.43	274.878	353.806	49%
<b>Australia</b>	3180.247	3528.71	3814.891	3982.735	4044.647	4405.178	4673.306	47%

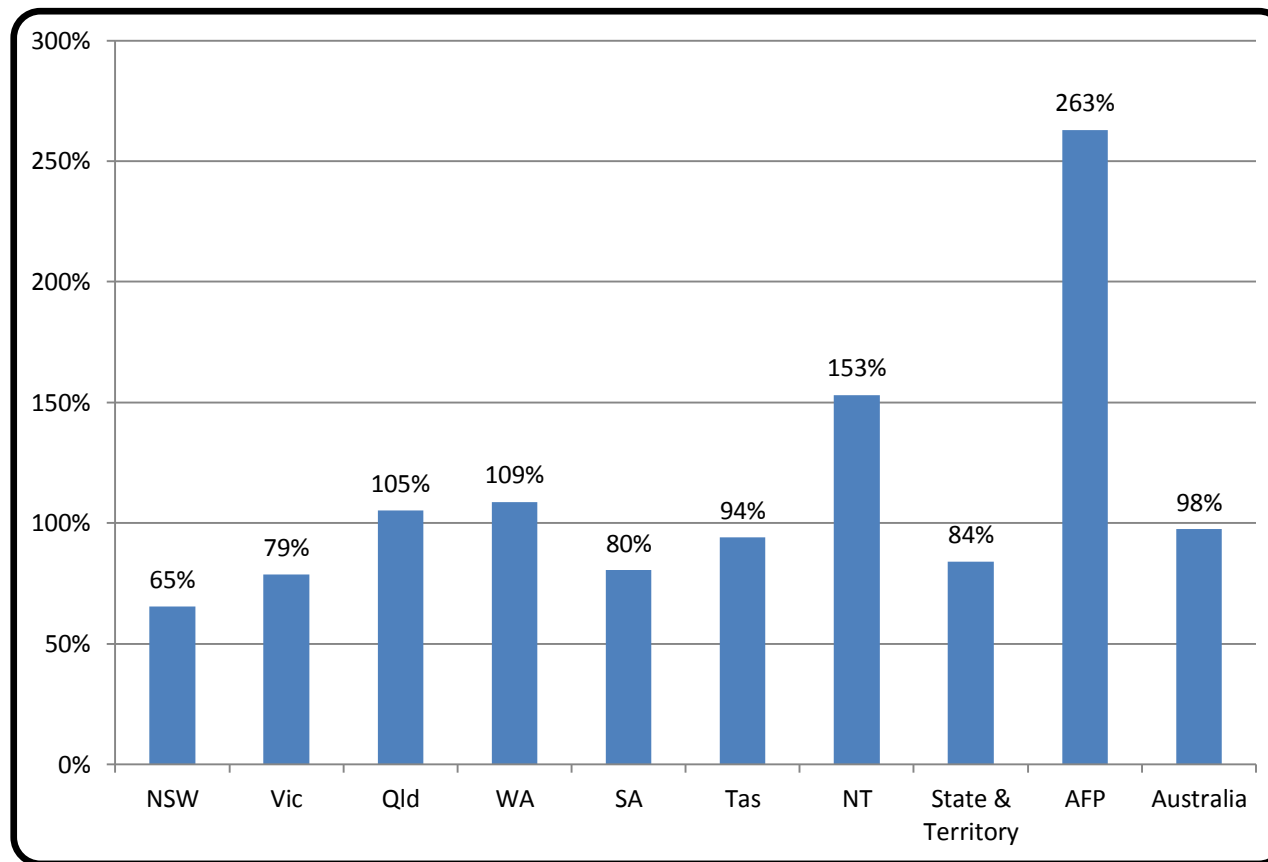
**Chart 6: Australian Police Agencies Funding 1993/94–1999/2000**



**Table 7: Australian Police Agencies Funding 2000/01–2009/10**

<b>Funding \$m</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>Percentage</b>
<b>NSW</b>	1637.8	1597.3	1798.7	1885.3	1940.9	2092.4	2282.9	2448.3	2543.9	2707	<b>65%</b>
<b>Vic</b>	1031.2	1097.9	1186.8	1251.6	1332.9	1469.1	1543.9	1619.2	1709.1	1842.5	<b>79%</b>
<b>Qld</b>	815.1	882.9	936.8	1009.8	1053.3	1183.9	1279.6	1416.2	1526.9	1672.1	<b>105%</b>
<b>WA</b>	488	538.4	570.5	616.7	676.9	718.3	791.9	861.2	958.2	1019	<b>109%</b>
<b>SA</b>	365.7	393.6	426.5	428.5	480.8	517.7	543.9	595.8	643	659.8	<b>80%</b>
<b>Tas</b>	104.1	114.3	120	114.5	138.8	150.5	162.5	177.2	186.6	202.1	<b>94%</b>
<b>NT</b>	102.7	117.5	126.3	146.4	158.7	174.6	187.2	211.6	240.6	259.9	<b>153%</b>
<b>State &amp; Territory</b>	4544.6	4741.9	5165.6	5452.8	5782.3	6306.5	6791.9	7329.5	7808.3	8362.4	<b>84%</b>
<b>AFP</b>	370.603	408.584	584.19	676.259	801.95	909.27	1094.303	1252.694	1242.458	1345.338	<b>263%</b>
<b>Australia</b>	4915.203	5150.484	5749.79	6129.059	6584.25	7215.77	7886.203	8582.194	9050.758	9707.738	<b>98%</b>

**Chart 7: Australian Police Agencies Funding 2000/01–2009/10**



### A3.3 AUSTRALIAN FEDERAL POLICE STATISTICS

Data concerning the AFP is based on the document “The First Thirty Years” (Australian Federal Police 2009) which provided at Chapter 7: Key Facts, 1979-2009. This chapter provides personnel statistics collected in a uniform manner for the period. However, they also include Protective Services staff figures which are separated in most of the related tables. This approach was taken because the function of protective services is inconsistent with the definition of policing used in the research.

It should be noted between 1984 and 2002 the protective services function was undertaken by a separate federal agency and personnel were transferred from the AFP in 1984 to the agency, Australian Protective Services (APS). Later the APS was disestablished and function was returned to the AFP in 2002 along with the staff. It should be noted some figures changed substantially concerning AFP personnel totals and this is explained by those structural changes.

Police personnel (excluding protective services) categories for the AFP after 1993 were able to be divided between ACT and National personnel because the ROGS provided both personnel and funding data from then on. In respect to AFP personnel categories, by subtracting the ACT total in the ROGS from the total AFP total in *The First Thirty Years* document, this enabled the construction of the respective tables and charts.

There was no data provided for 1981-82 in the AFP document concerning personnel. The total used – 2702, represents AFP sworn police officers which was extracted from the 1984 Australian Year Book (Australian Bureau of Statistics 1984 234).

The AFP funding data is provided from *The First Thirty Years*, Chapter 7: Key Facts, 1979-2009 (Australian Federal Police 2009).

AFP funding data for the periods 2008-09 and 2009-10 was obtained from the 2010 AFP Annual Report (Australian Federal Police 2010).

**Table 8: AFP Personnel Components 1980/81–2009/10**

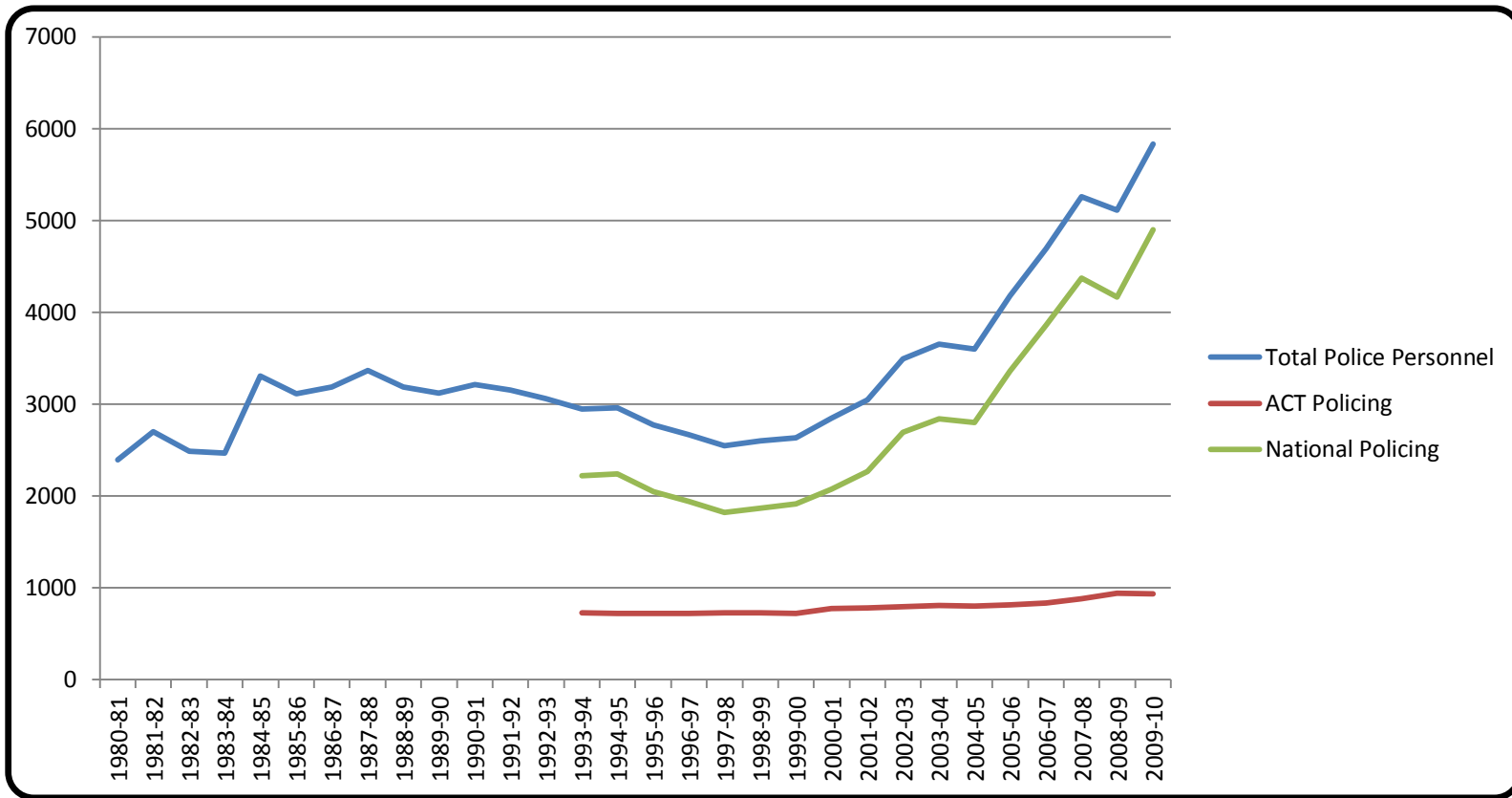
Category	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
Sworn	2020		2094	2033	2838	2568	2642	2713	2532	2401
Support	375		396	434	470	545	544	655	656	717
Total	2395	2702	2490	2467	3308	3113	3186	3368	3188	3118
Protective Services	1393		833	878						
Combined Total	3788		3323	3345	3308	3113	3186	3368	3188	3118
ACT Policing										
National Policing										

Category	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
Sworn	2543	2453	2394	2302	2291	2117	2027	1931	1887	1976	2032
Support	674	701	666	647	672	655	640	618	714	662	819
Total	3217	3154	3060	2949	2963	2772	2667	2549	2601	2638	2851
Protective Services											
Combined Total	3217	3154	3060	2949	2963	2772	2667	2549	2601	2638	2851
ACT Policing				729	723	723	723	728	730	720	775
National Policing				2220	2240	2049	1944	1821	1871	1918	2076



Category	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Percentage
Sworn	2043	2297	2326	2310	2396	2501	2855	2842	3200	58%
Support	1008	1199	1327	1291	1782	2194	2402	2271	2633	602%
Total	3051	3496	3653	3601	4178	4695	5257	5113	5833	144%
Protective Services			1145	1206	1257	1341	1341	1219	1067	-23%
Combined Total	3051	3496	4798	4807	5435	6036	6598	6332	6900	82%
ACT Policing	782	799	809	802	815	833	882	945	935	28%
National Policing	2269	2697	2844	2799	3363	3862	4375	4168	4898	121%

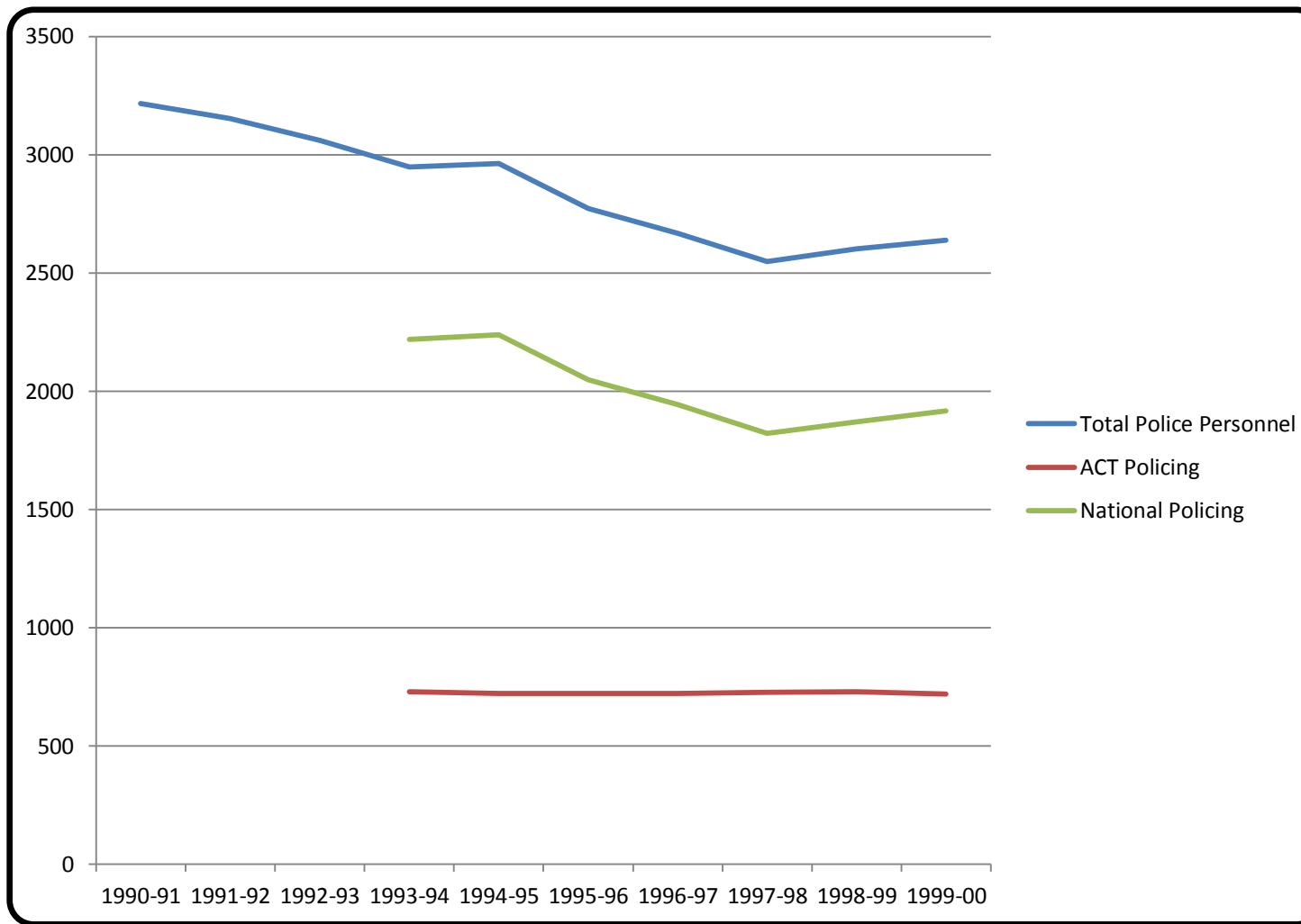
Chart 8: AFP Personnel Components 1979/80–2009/10



**Table 9: AFP Personnel Components Growth 1990/91–1999/2000**

	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	Percentage
<b>Total Personnel</b>	3217	3154	3060	2949	2963	2772	2667	2549	2601	2638	-18%
<b>ACT Policing</b>				729	723	723	723	728	730	720	-1%
<b>National Policing</b>				2220	2240	2049	1944	1821	1871	1918	-14%

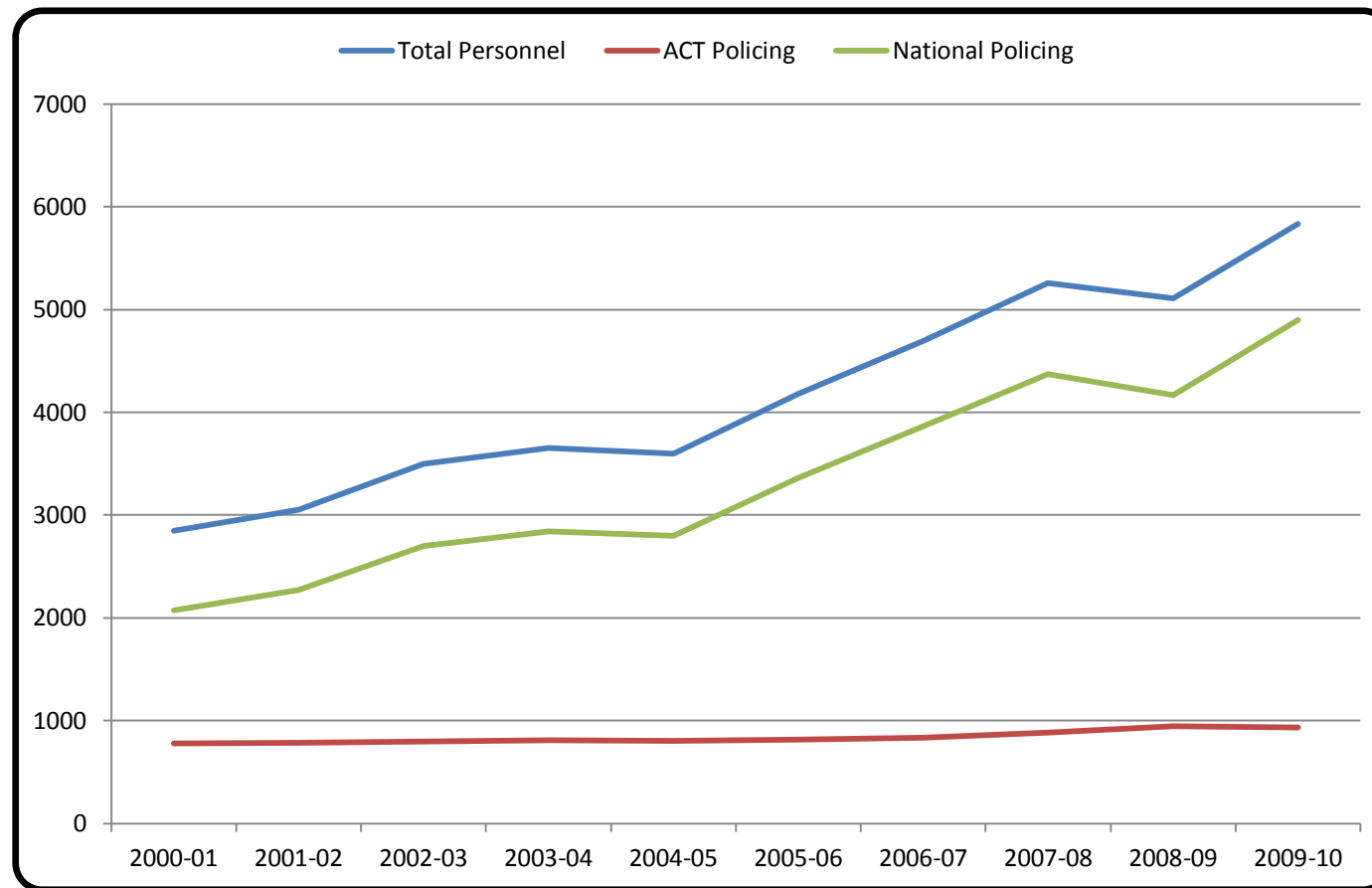
Chart 9: AFP Personnel Components 1990/91–1999/2000



**Table 10: AFP Personnel Components Growth 2001/02–2009/10**

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Percentage
<b>Total Personnel</b>	2851	3051	3496	3653	3601	4178	4695	5257	5113	5833	105%
<b>ACT Policing</b>	775	782	799	809	802	815	833	882	945	935	21%
<b>National Policing</b>	2076	2269	2697	2844	2799	3363	3862	4375	4168	4898	136%

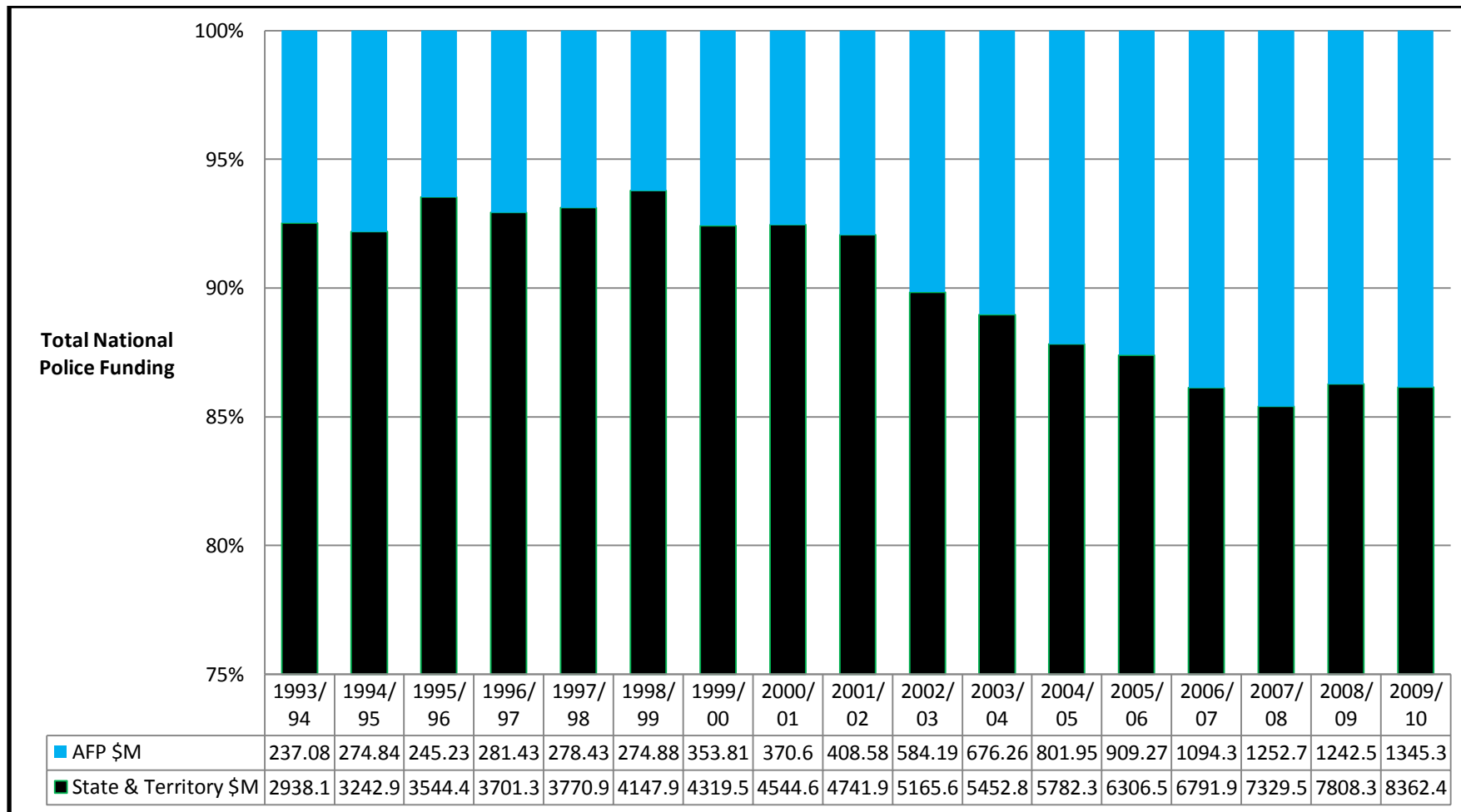
Chart 10: AFP Personnel Components 2001/02–2009/10



### A3.4 COMPARATIVE STATISTICS

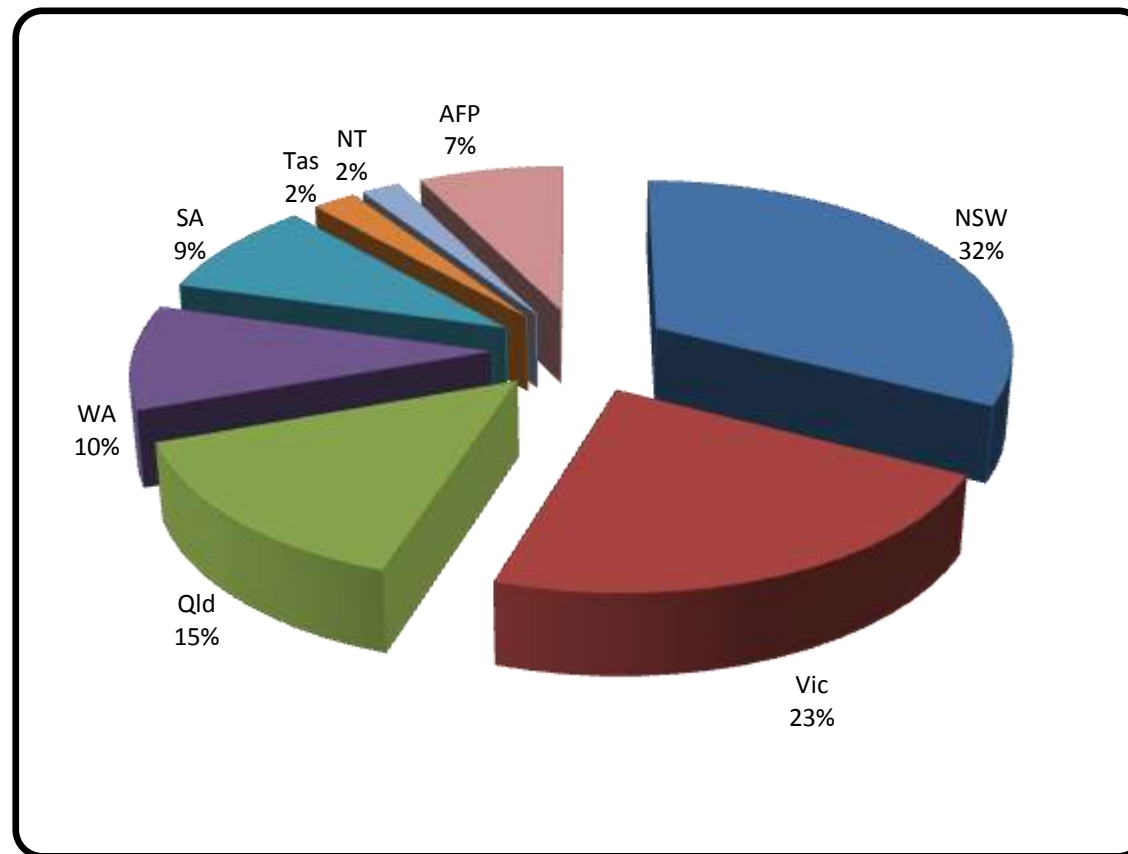
1. Source of Australian Police Agencies funding comparison — data derived from Table 5.
2. Source of Personnel Growth — data derived from Table 1.
3. Source of Consumer Price Index (CPI) — data have been derived from the 1301.0 Australian Year Book Series from ABS series available from <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/year+book+products?opendocument#from-banner=LN> Table 1 and
4. Source of Population statistics — data derived from two ABS series; 3101.0 *Australian Demographic Statistics* and 3105.0.65.001 *Australian Historical Population Statistics, 2008*, both available from <http://www.abs.gov.au/>

**Chart 11: Comparison of Funding AFP with Combined State and Territory Agencies 1993/94–2009/10**

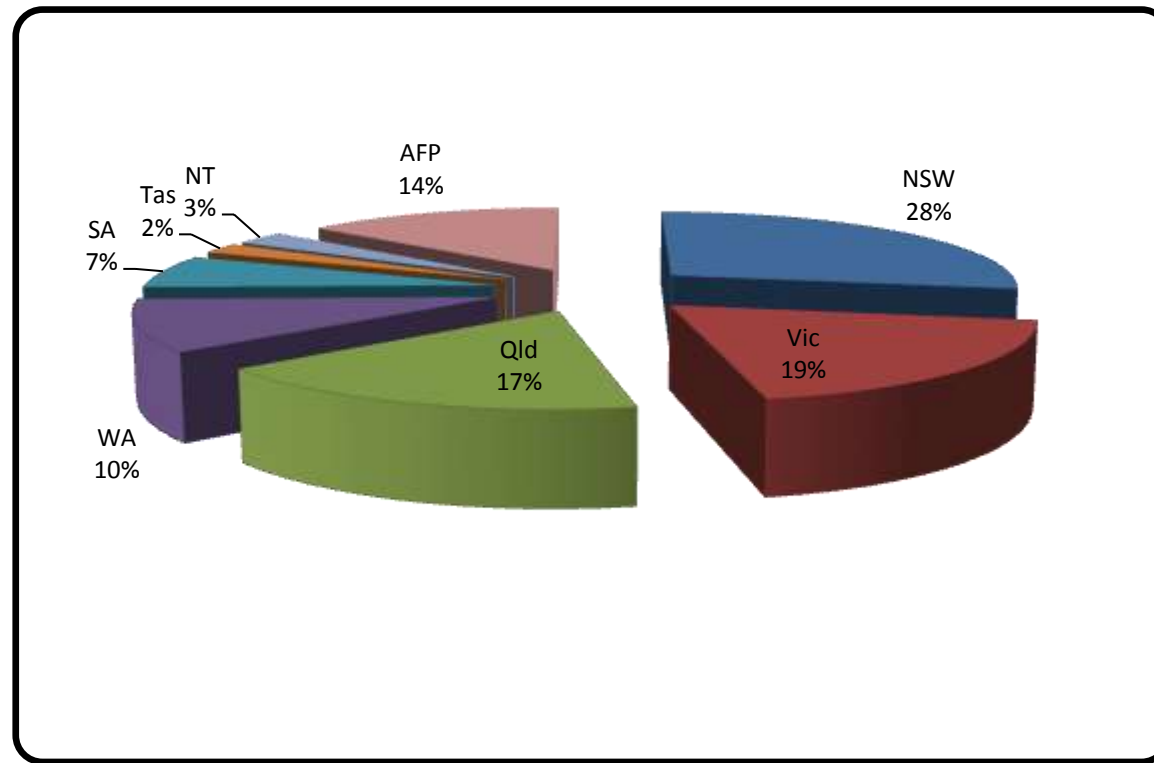




**Chart 12: Composition of Australian Police Agency Funding 1993/94**



**Chart 13: Composition of Australian Police Agency Funding 1993/94**

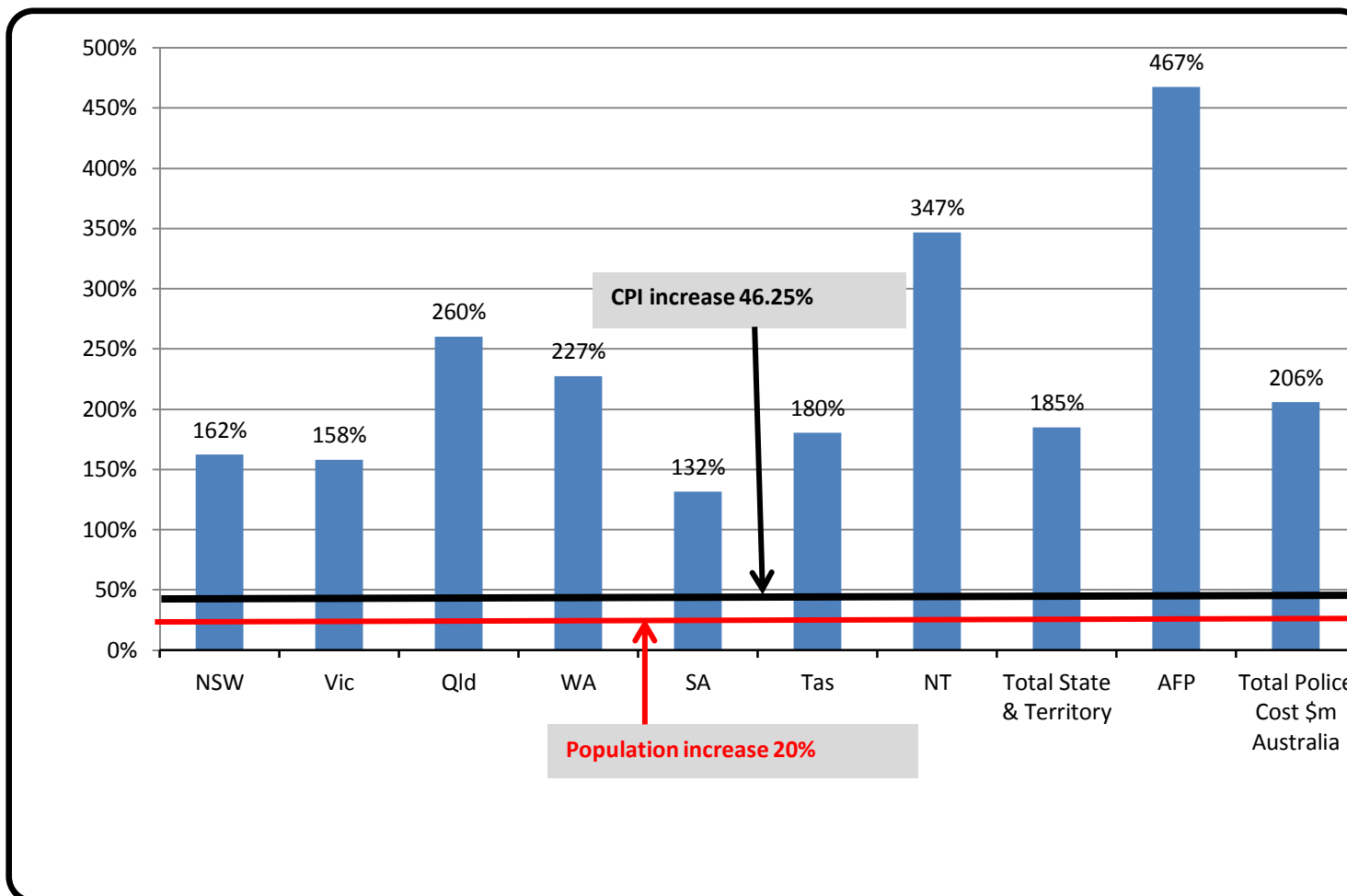


**Table 11: Comparison of Growth of CPI, Population, AFP Personnel and State and Territory Personnel 1981–2010**

Year	CPI percentage	Population	State & Territory Police Personnel	AFP Personnel
1981	10	14807370	29666	2395
1982	10.4	15054117	29809	2702
1983	12.5	15288891	30926	2490
1984	8.5	15483496	31448	2467
1985	5.6	15677282	31771	3308
1986	11.5	15900566	32702	3113
1987	13.9	16138769	34100	3186
1988	11.9	16394641	35162	3368
1989	12.8	16687082	36422	3188
1990	7.4	16936723	36825	3118
1991	5.3	17169768	38039	3217
1992	2	17387023	38208	3154
1993	1	17581284	39014	3060
1994	1.8	17759999	47636	2949
1995	3.2	17951481	48770	2963
1996	4.2	18196054	49983	2772
1997	1.3	18420320	50763	2667
1998	0	18609115	51502	2549
1999	1.2	18814276	51429	2601

Year	CPI percentage	Population	State & Territory Police Personnel	AFP Personnel
2000	2.4	19038338	48473	2638
2001	6	19272644	52588	2851
2002	2.9	19533972	54327	3051
2003	3.1	19770963	55282	3496
2004	2.4	20011882	56818	3653
2005	2.4	20252132	57365	3601
2006	3.1	20544064	58772	4178
2007	3	20848760	60549	4695
2008	3.4	21180632	61573	5257
2009	3.1	21951700	63370	5113
2010	2.3	22299800	63895	5833

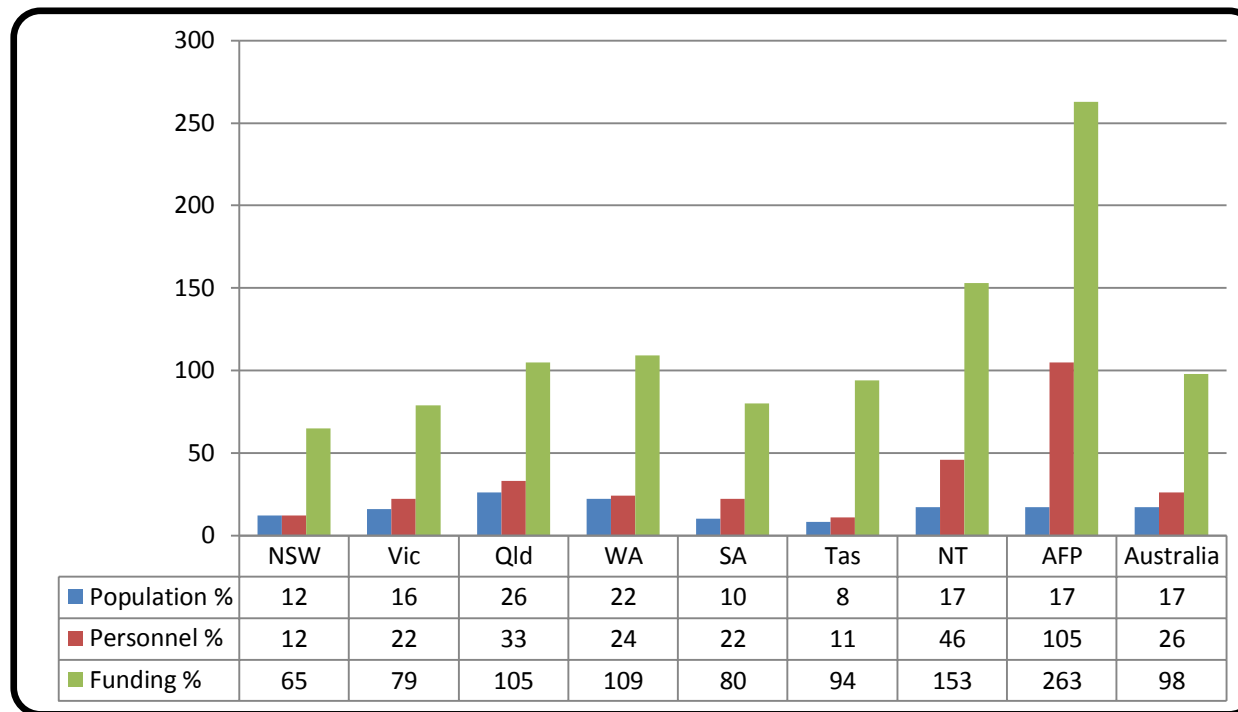
**Chart 14: Comparison of Growth of CPI, Population, Police Agency Funding 1993/94–2009/10**



**Table 12: Comparison of growth for Population, Police Personnel and Funding Growth 2000/01–2009/10**

<b>Percentage Increase</b>	<b>NSW</b>	<b>Vic</b>	<b>Qld</b>	<b>WA</b>	<b>SA</b>	<b>Tas</b>	<b>NT</b>	<b>AFP</b>	<b>Australia</b>
<b>Population</b>	12	16	26	22	10	8	17	17	17
<b>Personnel</b>	12	22	33	24	22	11	46	105	26
<b>Police Funding</b>	65	79	105	109	80	94	153	263	98

Chart 15: Comparison of growth for Population, Police Personnel and Funding Growth 2000/01–2009/10



## ***Appendix B***

### **Australian colonial policing**



## **B.1 Introduction**

The history of colonial policing has not been widely researched and there are only a few works that trace the development of policing in the Australian colonies from first settlement to Federation. Bryett (Bryett, Harison and Shaw 1994), Sturma (Sturma 1987), Milte and Weber (Milde and Weber 1977) provide insight into this period, and in particular they deal with the organisation and function of police in this 113 year period. Consideration of colonial policing is important as many of its characteristics were transferred to policing at Federation and are still found in contemporary Australian policing.

Policing in Australia began with the first settlement by the British in 1788 and the establishment of the penal settlement at Botany Bay, which later moved to Port Jackson or what is now known as Sydney. Martial law was the basis of policing and this existed for some time with the military units garrisoned in the colony being the primary agents of the government for the maintenance of order and law enforcement. The fear of a convict rebellion (Sturma 1987, 18), was for the formative years of settlement a matter which underpinned the provision of policing and how it was structured. Some 165,000 convicts were transported to the Australian colonies from 1788 to 1868 and it was only during the gold rushes between 1851 and 1871 that significant numbers of free settlers arrived. Some 370,000 immigrants arrived as gold miners and settlers in that twenty year period, which diluted the convict heritage of the colonies. Prior to 1851 convicts and ex-convicts formed a large percentage of the population and the fear of this group by government and free-settlers was tangible (Milde and Weber 1977, 23).

From the one colony of New South Wales (NSW) in 1788, new colonies developed as exploration and new settlements were established along the continental coast and on the island of Van Diemen's Land (Tasmania). By the time of the end of colonial rule in 1901 there were six well established and politically mature colonies, all with a central system of policing and a single police force.

There have been three stages to the development of policing in colonial Australia. The first stage involved policing by the military in New South Wales. The

second stage was policing became a civil responsibility and was initially based on the Irish Constabulary model, and the last stage saw policing moved from the Irish model to Peel's civilian model and being centralised. This later policing model was what was taken by the new States to Federation.

Perhaps the most important and lasting characteristics of colonial policing is the fact that from the first European settlement, policing has been considered one of the central responsibilities of government. This position has not changed over time and remains a key characteristic of the contemporary Australian policing model.

## **B.2 Colonial Development**

The three stages in the development of colonial policing are considered separately and they provide an interesting insight into how Australian policing developed to Federation in 1901. However, before dealing with policing a brief outline of the political development of the colonies sets the political environment that policing was nurtured.

Five new colonies were established after the first settlement and three of those were established as a result of exploration by the NSW government along the east coast. Initially a settlement was attempted at Port Phillip Bay (Victoria) in 1803, this failed and the settlers moved to Hobart on Van Diemen's Land (Tasmania) and settled there in 1804. A settlement at Moreton Bay (Queensland) was established in 1824, which later moved to Brisbane. Victoria was resettled in two places, firstly in 1834 at Portland and then in 1835 at the mouth of the Yarra River in Port Philip Bay (Melbourne). Eventually these three NSW settlements became colonies in their own right: Victoria 1851; Van Diemen's Land was renamed Tasmania and became independent in 1856; and Queensland in 1859. Two other colonies were established on the Australian continent, away from NSW as independent British colonies: Western Australia in 1829 and South Australia in 1836. Thus, by 1859 there were six independent British colonies on the Australian continent, all which had political and government structures based on Westminster.

The development of policing after 1859 was also influenced by the changes made in Britain and these were influential on the development of policing in the Australian colonies (Milte and Weber 1977, 22–32, Bryett, Harison, and Shaw 1994, 77–79).

### **B.3 Martial Law and the First Settlement**

The military units that accompanied the First Fleet to New South Wales were primarily responsible for regulating the convict population at sea then once they landed, maintain law and order (inclusive of regulating convicts) in the new colony. Initially a military governor had absolute power over the colony and this was later tempered with a judicial system based on the laws of England. During this short period, there were no professional police or force, with the military taking responsibility until civilianisation became the central feature in the next stage of colonial policing (Bryett, Harison and Shaw 1994, 69–71).

### **B.4 Policing the Early Colonies**

The military only played a small role in policing before successive Governors of NSW established police organisations. Initially in 1789 Governor Phillip created positions for constables and nightwatchmen “to patrol the settlement during the night” (Milte and Weber 1977, 22). Later, governors in 1795 (Hunter), 1801 (King) and 1810 (Macquarie) established more police positions and provided a superintendent to manage the police (Milte and Weber 1977, 22–23). As settlement expanded out of Sydney and along the east coast, the policing model used by governments was based on the Irish Constabulary, a paramilitary model that obviously suited the transition to civilian rule. This model provided the steel to cope with regulation of the substantial number of convicts and ex-convicts along with the ability to deal with the volatile issues along the expanding frontiers (Milte and Weber 1977, 22–23; Sturma 1987, 20–28; Moir 2004, 59–60). Perhaps the perceived divide between the classes that made up the population allowed the Irish approach to prosper as fear of aboriginal and civil insurrection appeared to be a powerful threat envisaged by the administrators of the colonies in the formative years of settlement. However, the great policing reforms emanating out of Westminster by the Home

Secretary Robert Peel in 1829, did eventually trickle down and changed how policing was undertaken in the colonies.

From a government perspective the first major reform in policing came in 1810, when Governor Macquarie established a full-time police force with a superintendent as the head. “This provided civilian control of the force under a single head for the first time” (Milte and Weber 1977, 22). The quality of policing was not always good and a range of changes occurred in order to improve the police of which recruiting experienced officers from England and Ireland was pivotal. As mentioned previously, the model of policing was very much based on the Irish Constabulary with mounted police units formed to police the outer areas and along the expanding frontier, and able to provide appropriate responses in times of unrest.

A significant development for colonial policing at this time, which continues to this day, was providing a statutory basis for the establishment and control of police. This began with the enactment of first police legislation in Australia, the *Sydney Police Act 1833*. Later this legislation was expanded to provide policing outside of the Sydney area, with the enactment of the *Police Act 1838 No 6a*. According to the Act’s preamble, the purpose of this legislation was to authorise police forces to be established “in the towns of Parramatta Windsor Maitland Bathurst and other Towns”. This was the basic police legislation for settlements in other parts of the colony that later became colonies in their own right.

After 1829 with the Peel reforms in Britain increasing the civil nature of policing *vis-à-vis* paramilitary Irish Constabulary approach, there was an option to follow “current British thinking” (Milte and Weber 1977, 23). However this was not taken up for many years because of the perceived threats faced by the government from civilian unrest. The fear of convict insurrection, native resistance to expansion of settlement and bushrangers made the existing model more feasible. It was only in the 1850s when the approach to policing started to move away from the Irish model and more towards the tenets of Peel’s police (Sturma 1987, 27–28).

By the beginning of the next period of colonial policing in 1860, the acceptance of the Peel policing model and its application in the colonies was becoming a topic of discussion and action by governments.

#### **B.4.1 Providing a Statutory Base for Colonial Policing**

By 1860 the political and government structure of the colonies was developing and each colony enjoyed a great deal of self-government and local control. An important part of the structure of government was the operation of policing that was seen as a government responsibility. This view of policing was reflected in the police legislation that provided the rudimentary structure through the formal establishment of the police forces and governance being vested in a commissioner (Bryett, Harison, and Shaw 1994, 77–79). By 1860 the main features of policing, emanating from this legislative approach, were:

1. The Police Force and the powers of officers were provided by law.
2. A Commissioner or Superintendent was responsible for the management of the force, including detailing the functions performed by officers.
3. Policing was a full-time career.
4. Policing was centralised except for Tasmania, which was highly decentralised. In 1898, all the Tasmanian police forces were amalgamated into one police force under the control of the colonial government.
5. There were no private police.
6. The colonial governments monopolised policing and the Commissioner was responsible to the executive government through the Governor of the colony.

The following table details the respective colonial police legislation.

**Figure 1: Colonial Police Legislation**

<b>Colony</b>	<b>Colonial Police Legislation</b>
<b>New South Wales</b>	<i>Sydney Police Act 1833</i> <i>Police Act 1838 No 6a</i> <i>Police Regulation Act 1862 No 6a</i>
<b>South Australia</b>	<i>Police Ordinance 1839</i> <i>Police Act 1870</i>
<b>Western Australia</b>	<i>Police Ordinance (12 VICT. No.20) - 1848</i> <i>Police Amendment (23 Vict. No. 5) - 1859</i> <i>Police Ordinance 1861 (25 VICT. No. 20) - 1861</i> <i>The Police Act 1892 (55 VICT. No. 27)</i>
<b>Victoria</b>	<i>Police Act 1853</i> <i>NSW Police Act 1838 No 6a</i> <i>Police Force Act 1854</i> <i>Police Regulation Statute 1873</i> <i>Police Regulation Act 1890</i>
<b>Queensland</b>	<i>Police Act 1863</i>
<b>Tasmania</b>	<i>The Police Act, 1865 (29 VIC NO 10)</i> <i>Police Regulation Act 1865 (29 VIC NO 9)</i> <i>Police Regulation Act 1898 (62 VIC NO 48)</i>

### **B.5 Evolving Colonial Policing Post 1860**

The main change to colonial policing after 1860 was the move away from the Irish Constabulary model and embracing the Peel doctrine for policing. Milte attributes the passing of Australia's first police act, the *Sydney Police Act* in 1833, to have been "inspired" by Peel's police reform of 1829 (Milte and Weber 1977, 23). The Act was the foundation act for all policing in the colonies.

Peel's police reforms were based on the philosophy policing needed to be undertaken with the consent of the community and not enforced upon it. The key dimensions of the Peel model was the police force was to be established by legislation and the functions were to be governed by the law and underpinned by the notion of police enforcing the law in an impartial manner (Lenz and Chaires 2007). Governance provisions provided the police became accountable to the community and the government. The foundation of this approach was Peel's nine principles of law enforcement.

### Figure 2: Peels Principles of Law Enforcement

1. The basic mission for whom the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon the public approval of police actions.
3. Police must secure the willing co-operation of the public in voluntary observation of the law to be able to secure and maintain the respect of the public.
4. The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
5. Police seek and preserve public favor not by catering to public opinion, but by constantly demonstrating absolute impartial service to the law.
6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice, and warning is found to be insufficient.
7. Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent upon every citizen in the interests of community welfare and existence.
8. Police should always direct their action strictly towards their functions, and never appear to usurp the powers of the judiciary.
9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.

As the principles attest, policing was to be delivered with the consent and cooperation of the community and not be delivered on the whim of the government. The contrast between the paramilitary Irish model originally practiced in Australia, and Peel's model was significant. The most important aspect of the principles for colonial policing at the time was the fifth, which became part of colonial police legislation and continues to be part of current Australian police legislation. The principle of police being impartial is included in every *Oath of Office* in the respective Acts and is the basis of the law that underpins police – police are primarily independent, which ensures in theory they are impartial.

The modern colonial police forces that were taken to Federation had by that time established the characteristics of being government services that employed professional career based officers and subscribed to a doctrine based upon Peel's principles (Bryett, Harison, and Shaw 1994, 86).

The nature of colonial policing in 1901, that formed the foundation for Australian policing was characterised by a number of organisational and function features, many that continue on in the present State police agencies. These features have been derived from analysing the pre-Federation colonial legislation of the six colonies, in the late 1890s:

1. Policing was monopolised by State governments and no local government or private police operated.
2. Policing was centralised and each State had only one police force.
3. The organisation and function of policing was based upon one police statute and the relevant common law derived from England.
4. Policing was a profession, characterised by the Peelian tenets of impartiality, acting within the law, using minimum force and having the support of the community.



## ***Appendix C***

### **Statutory provisions for functions of Australian police agencies**

### Statutory provisions for functions of Australian police agencies

Jurisdiction	Functions of Police
<b>Australian Federal Police</b>	<p><i>Australian Federal Police Act 1979</i> (Cth) section 8</p> <p>(1) The functions of the Australian Federal Police are:</p> <ul style="list-style-type: none"> <li>(a) subject to subsection (1A), the provision of police services in relation to the Australian Capital Territory; and</li> <li>(aa) the provision of police services in relation to the Jervis Bay Territory; and</li> <li>(b) the provision of police services in relation to: <ul style="list-style-type: none"> <li>(i) laws of the Commonwealth;</li> <li>(ii) property of the Commonwealth (including Commonwealth places) and property of authorities of the Commonwealth; and</li> <li>(iii) the safeguarding of Commonwealth interests; and</li> </ul> </li> <li>(baa) the investigation of State offences that have a federal aspect;</li> </ul>
<b>New South Wales</b>	<p><i>Police Act 1990</i> (NSW) section 6</p> <p>Mission and functions of NSW Police Force</p> <p>(1) The mission of the NSW Police Force is to work with the community to reduce violence, crime and fear.</p> <p>(2) The NSW Police Force has the following functions:</p> <ul style="list-style-type: none"> <li>(a) to provide police services for New South Wales,</li> <li>(b) to exercise any other function conferred on it by or under this or any other Act,</li> <li>(c) to do anything necessary for, or incidental to, the exercise of its functions.</li> </ul> <p>(3) In this section:</p> <p>"police services" includes:</p> <ul style="list-style-type: none"> <li>(a) services by way of prevention and detection of crime, and</li> <li>(b) the protection of persons from injury or death, and property from damage, whether arising from criminal acts or in any other way, and</li> <li>(c) the provision of essential services in emergencies, and</li> <li>(d) any other service prescribed by the regulations.</li> </ul>
<b>Northern Territory</b>	<p><i>Police Administration Act</i> (NT) section 5</p> <p>(2) The core functions of the Police Force are:</p> <ul style="list-style-type: none"> <li>(a) to uphold the law and maintain social order; and</li> <li>(b) to protect life and property; and</li> <li>(c) to prevent, detect, investigate and prosecute offences;</li> <li>(d) to manage road safety education and enforcement measures; and</li> <li>(e) to manage the provision of services in emergencies.</li> </ul>
<b>Queensland</b>	<p><i>Police Service Administration Act 1990</i> (Qld) section 2.3</p> <p>2.3 Functions of service</p>

	<p>The functions of the police service are—</p> <p>(a) the preservation of peace and good order—</p> <p>(i) in all areas of the State; and</p> <p>(ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;</p> <p>(b) the protection of all communities in the State and all members thereof—</p> <p>(i) from unlawful disruption of peace and good order that results, or is likely to result, from –</p> <p>(A) actions of criminal offenders;</p> <p>(B) actions or omissions of other persons;</p> <p>(ii) from commission of offences against the law generally;</p> <p>(c) the prevention of crime;</p> <p>(d) the detection of offenders and bringing of offenders to justice;</p> <p>(e) the upholding of the law generally;</p> <p>(f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of—</p> <p>(i) the provisions of the Criminal Code;</p> <p>(ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the service;</p> <p>(iii) the powers, duties and discretions prescribed for officers by any Act;</p> <p>(g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are—</p> <p>(i) required of officers under any Act or law or the reasonable expectations of the community; or</p> <p>(ii) reasonably sought of officers by members of the community.</p>
<b>South Australia</b>	<p><i>Police Act 1998 (SA) section 5</i></p> <p>The purpose of S.A. Police is to reassure and protect the community in relation to crime and disorder by the provision of services to—</p> <p>(a) uphold the law; and</p> <p>(b) preserve the peace; and</p> <p>(c) prevent crime; and</p> <p>(d) assist the public in emergency situations; and</p> <p>(e) co-ordinate and manage responses to emergencies; and</p> <p>(f) regulate road use and prevent vehicle collisions.</p>
<b>Tasmania</b>	No specific provisions for functions
<b>Victoria</b>	No specific provisions for functions
<b>Western Australia</b>	No specific provisions for functions

***Appendix D***

**Commonwealth Criminal Legislation 1980–2010**

### Police related Commonwealth legislation 1980–2010

<b>1980–85</b>	Royal Commissions: Costigan, Stewart and Hope identify criminal activity affecting the Commonwealth and establish the need for additional Commonwealth criminal offences and related investigation powers i.e. listening devices and telephone interception.
<b>1990–93</b>	Commonwealth and States establish a committee to develop a national 'model' criminal code.  1. Commonwealth Criminal Code 2. Crimes Act Amendments
<b>1994</b>	Commonwealth Parliament uses its external affairs power to override a State criminal law – Tasmania's law against sodomy.
<b>1995</b>	Criminal Code Act passed and supersedes Crime Act 1914 as main piece of Commonwealth criminal law. Expands the scope and range of Commonwealth criminal law extensively.
<b>2001</b>	States refer corporation's law to Commonwealth Parliament.
<b>2002–10</b>	<p>April 2002 Leaders Summit on terrorism and multi-jurisdictional crime ratifies the expansion of Commonwealth criminal law and jurisdiction of Commonwealth police.</p> <p>First Commonwealth criminal offences and criminal procedures concerning terrorism legislated as a result of States referring this area of criminal law to Commonwealth. State also refer powers concerning organised crime empowering new criminal laws and establishment of ACC.</p> <p>Federal police authorised to investigate State crimes incidental to Commonwealth investigations.</p> <p>Commonwealth use express incidental and implied incidental powers to legislate for additional Commonwealth crimes in areas concerning:</p> <ol style="list-style-type: none"> <li>1. Crimes against humanity</li> <li>2. Cybercrime</li> <li>3. Financial and money laundering</li> </ol>

## ***Appendix E***

- 1.     Communique from Leaders Forum 4 April 2002**
- 2.     Agreement 5 April 2002**
- 3.     Agreement 25 June 2004**

## 1. Communique of 4 April 2002



### Media Statements

Media Statements - Statement Details



Geoff Gallop

### Leaders' forum communique

Thursday, 4 April 2002  
4/4/02

Australia's Premiers and Chief Ministers today called for a new co-operative approach to State/Territory Federal relations to address the

challenges facing Australia.

Meeting in Canberra at a Leaders' Forum on the eve of tomorrow's Council of Australian Governments (COAG) meeting and the National Summit on Transnational Crime and Terrorism, the six Premiers and two Chief Ministers demonstrated an unprecedented level of consensus among all the States and Territories.

The Leaders called on the Federal Government to seize this unique opportunity and agree to positively work with the States and Territories on a long-term agenda for Australia.

The Leaders highlighted that when COAG was established 10 years ago, its charter was to increase co-operation among governments in the national interest and provide an opportunity for consultation on major issues by agreement. It was never intended that the Commonwealth would have exclusive control over the agenda setting process.

The Leaders stated that the national interest would be served by all governments reaffirming the commitment to COAG as a robust forum for dialogue, and they called on the Commonwealth to agree to reform the operation of the council to ensure it becomes a meaningful forum for inter-governmental co-operation. In particular, they said that all States and Territories should have the right to nominate items on the agenda, and that agenda papers should be circulated well in advance of COAG meetings.

It was noted that a truly national approach where Governments work together rather than in competition is the only way to make progress on issues such as terrorism, organised crime, water reform, foot and mouth disease and staying at the forefront of the biotechnology revolution.

#### National Anti Terrorism Plan

The Leaders gave strong support for measures to ensure Australia is well prepared to respond to any terrorist action in this country. They agreed on a 12 point plan that will put in place an effective framework to deal with terrorism and major organised crime.

Key elements of the plan include:

- providing the Commonwealth with a strategic leadership role for national terrorist situations;
- reviews by all jurisdictions to ensure legislation and counter terrorism arrangements are sufficiently strong;
- a new body to replace the National Crime Authority that retains a core investigative capacity and the capacity to use coercive powers but has streamlined processes for obtaining references to investigate criminal activity of national significance;
- appointment of a new board comprising the heads of all major crime investigation bodies under the oversight of State and Commonwealth ministers;
- reforming money laundering laws, legislating through model laws for all jurisdictions and by mutual recognition for a national set of powers on cross border investigations and eliminating administrative and legal barriers in pursuit of criminals operating in more than one jurisdiction; and
- allowing investigations by Federal Police into State offences incidental to Commonwealth offences.

The Leaders emphasised their commitment to work co-operatively with the Commonwealth to carry out the detailed work needed to put this plan into place. The plan has been developed to ensure that new arrangements are effective, operationally sound and provide the tools that law enforcement agencies need to combat crime in all its forms.

#### Foot and Mouth Disease

The Leaders endorsed the national plan for combating foot and mouth disease. The plan is based on a co-operative model under which State and Commonwealth agencies work closely together to ensure that

## **2. Agreement of 5 April 2002**

### **COMMONWEALTH AND STATES AND TERRITORIES AGREEMENT ON TERRORISM AND MULTI-JURISDICTIONAL CRIME, 5 APRIL 2002**

The Prime Minister and State and Territory Leaders agreed that a new national framework is needed to meet the new challenges of combatting terrorism and multi-jurisdictional crime. The attacks in the United States on 11 September last year indicated that previous assumptions about the nature and potential scale of terrorism are no longer valid. In addition, they noted that international and organised criminal groups did not respect state or national borders, and their activities could also result in major harm to all Australians. They recognised the importance of effective cooperation between the jurisdictions, and the need to build on arrangements that are currently in place in adding elements to national arrangements that will respond quickly and effectively to these challenges.

#### **In relation to terrorism, Leaders agreed:**

1. The Commonwealth to have responsibility for "national terrorist situations", to include attacks on Commonwealth targets, multi-jurisdictional attacks, threats against civil aviation and those involving chemical, biological, radiological and nuclear materials.
2. The Commonwealth will consult and seek the agreement of affected States and Territories before a national terrorist situation is declared and States and Territories agree not to withhold unreasonably such agreement.
3. To take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power of specific, jointly agreed legislation, including roll back provisions to ensure that the new Commonwealth law does not override State law where that is not intended and to come into effect by 31 October 2002. The Commonwealth will have power to amend the new Commonwealth legislation in accordance with provisions similar to those which apply under Corporations arrangements. Any amendment based on the



referred power will require consultation with and agreement of States and Territories, and this requirement to be contained in the legislation.

**That all jurisdictions will review their legislation and counter-terrorism arrangements to make sure that they are sufficiently strong.**

4. That the Commonwealth and States and Territories will continue to:

(i) improve Australia's anti-terrorist intelligence capacity and to develop effective means for sharing intelligence.

(iii) significantly upgrade the central coordination capacity so that the operational arms of the Commonwealth and the States and Territories can obtain the information and strategic advice necessary to respond rapidly and effectively.

6. The existing Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV) will also be reconstituted as the National Counter-Terrorism Committee with a broader mandate to cover prevention and consequence management issues and with Ministerial oversight arrangements.

**IN RELATION TO ORGANISED CRIME, LEADERS AGREED:**

7. To strengthen the fight against organised crime it is agreed to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC) that builds on the important features of the NCA for effective national law enforcement operation in partnerships with State and Territory police forces whilst removing the current barriers to its effectiveness.
8. The ACC to be focussed on criminal intelligence collection and establishment of national intelligence priorities.
9. The ACC to have access to taskforce investigative capability to give effect to its intelligence functions and to support its overall operations. The ACC to include the Office of Strategic Crime Assessments and the Australian Bureau of Criminal Intelligence.
10. The Board of the ACC to include representatives from all States and Territories. Ministerial oversight will be retained by having the Board report to an Intergovernmental Committee of State and Commonwealth Ministers.
11. To streamline the process for obtaining investigation references.
12. The ACC will retain the capacity to use coercive powers and to investigate criminal activity of national significance;
13. Other details to be settled by mutual agreement with the new body to come into operation by 31 December 2002.

**IN RELATION TO ARRANGEMENTS FOR DEALING WITH MULTI-JURISDICTIONAL CRIME, LEADERS AGREED:**

15. To reform the laws relating to money laundering, including a possible reference of powers to the Commonwealth if necessary, for effective offences.
16. To legislate through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations covering controlled operations and assumed identities legislation; electronic surveillance devices; and witness anonymity. Legislation to be settled within 12 months.
17. To legislate and develop administrative arrangements to allow investigations by the Australian Federal police into State offences incidental to multi-jurisdictional crime.
18. To modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002), model computer offences (during 2002), model serious drug offences (during 2003).
19. To ensure adequate access to radio-frequency spectrum for an effective interoperability between national security, police and emergency services agencies.
20. To enhance capacity in each jurisdiction for the collection and processing of samples to create DNA profiles, and the uploading of profiles onto the national DNA database.
21. To undertake as a matter of priority work in the following areas of law enforcement: control over the illegal importation of criminal contraband specifically illicit drugs and firearms; extradition between States; recognition of expert evidence (such as drug analysis certificates); firearms trafficking; identity fraud; vehicle rebirthing; gangs; and cybercrime. The purpose of this work is to ensure elimination of administrative and legal barriers in pursuit of criminals operating in more than one jurisdiction.

**3. Agreement of 25 June 2004**

## **AGREEMENT ON COUNTER-TERRORISM LAWS**

25 June 2004

This agreement is entered into on 25 June 2004 by:

The Commonwealth of Australia

The State of New South Wales

The State of Victoria

The State of Queensland

The State of Western Australia

The State of South Australia

The State of Tasmania

The Australian Capital Territory

The Northern Territory of Australia.

## Recitals

1. The Prime Minister, Premiers and Chief Ministers agreed on 5 April 2002 to take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power so that the Commonwealth may enact specific, jointly-agreed legislation. It was agreed that the new Commonwealth legislation will incorporate roll back provisions to ensure that it does not override State or Territory law where that is not intended, and that the Commonwealth will have power to amend the new legislation in accordance with provisions similar to those which apply under Corporations arrangements. It was further agreed that any amendment based on the referred power will require consultation with, and agreement of, States and Territories, and that this will be contained in the legislation.
2. The Commonwealth subsequently enacted legislation designed to enhance Australia's capacity to deal with terrorists, including certain Federal offences contained in Part 5.3 of the Commonwealth Criminal Code.
3. The parties consider it appropriate to facilitate comprehensive national application of those offences by means of State references in accordance with paragraph 51 (xxxvii) of the Commonwealth Constitution.
4. The parties consider it appropriate to facilitate agreement in relation to amendment of those offences from time to time by the Commonwealth Parliament by means of this agreement.
5. The parties also consider it appropriate to facilitate agreement in relation to regulations specifying terrorist organisations for the purposes of Part 5.3 of the Commonwealth Criminal Code by means of this agreement.
6. This agreement sets out a process, consistent with undertakings given to the States and Territories by the Commonwealth, for obtaining the States' and Territories' agreement to amendments and regulations which may be proposed.

**The parties agree:**

## Part 1 Preliminary

### 1.1 Definitions

(1) In this agreement:

***Commonwealth*** means the Commonwealth of Australia;

***express amendment*** means the direct amendment of the text of the legislation by Commonwealth Acts, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect other than as part of the text of the legislation;

***initiate***, in relation to the making of legislation, includes introduction in the Commonwealth Parliament and other processes leading to enactment;

**party** means the Commonwealth, or a referring State or a Territory that is a party to this agreement;

**referring State** means a State which:-

(a) in accordance with paragraph 51 (xxxvii) of the Commonwealth Constitution, has referred matters to the Commonwealth Parliament sufficient to enable the following legislation to extend, of its own force, to the State:

(i) Part 5.3 of the Commonwealth Criminal Code, as enacted by the Commonwealth Parliament on 27 May 2003, and

(ii) express amendments to Chapter 2 and Part 5.3 of the Commonwealth Criminal Code after that date, and

(b) has not withdrawn either or both of the referred matters covered by subparagraphs (a) (i) and (ii);

**State** means a State of the Commonwealth; and

**Territory** means the Australian Capital Territory or the Northern Territory.

(2) In this agreement, a reference to an Act, whether of the Commonwealth or a State, includes a reference to:

(a) that Act as amended and in force for the time being; and

(b) an Act passed in substitution for the Act.

## **Part 2 Effect and operation of agreement**

### **2.1 Commencement**

This agreement comes into operation when it has been signed on behalf of all parties.

### **2.2 Amendment of Agreement**

This agreement may be varied only by the unanimous decision of the parties.

## **Part 3 Legislation**

### **Division 1 Preliminary**

#### **3.1 Purpose of this Part**

(1) The purpose of this Part is to preserve and promote the legislative scheme that the parties are enacting for the punishment of persons participating in terrorism or terrorist acts.

(2) This Part establishes procedures for consultation and agreement between the parties before:

(a) the enactment of any legislation that would amend or alter Chapter 2 or Part 5.3 of the Commonwealth Criminal Code (to the extent that amendments of Chapter 2 are

intended to apply only to Part 5.3, and not to be of general application to Commonwealth offences); and

(b) the making of any regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Commonwealth Criminal Code.

*[Note: Limitation to amendments of Chapter 2 that would apply only to Part 5.3 reflects 100.8 of the Criminal Code as amended by the Criminal Code Amendment (Terrorism) Act 2003.]*

### **3.2 Nature of the legislative scheme**

The legislative scheme agreed to by the parties involves:

(a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with paragraph 51 (xxxvii) of the Constitution; and

(b) the re-enactment by the Commonwealth Parliament of Part 5.3 of the Commonwealth Criminal Code, partly in reliance on the State referrals mentioned in paragraph (a); and

(c) the possible amendment from time to time of Chapter 2 and Part 5.3 of the Commonwealth Criminal Code in accordance with this agreement.

## **Division 2 Alterations of Chapter 2 and Part 5.3 of the Commonwealth Criminal Code**

### **3.3 Commonwealth legislation relating to Chapter 2 and Part 5.3 of the Commonwealth Criminal Code**

(1) Except as provided by subclause (2), the Commonwealth will not introduce a Bill or make subordinate legislation that would repeal or amend Chapter 2 or Part 5.3 of the Commonwealth Criminal Code unless, before its introduction or making:

(a) the other parties have been consulted about it; and

(b) except as provided by subclause (3), a majority of the other parties, including at least four States, have approved it.

*[Note: For the avoidance of doubt, a regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Criminal Code as amended by the Criminal Code Amendment (Terrorism) Act 2003 is not covered by this provision; a regulation made for the purpose of section 100.7 of the Criminal Code is taken to be covered by this provision.]*

(2) If a Bill contains amendments to Part 5.3 of the Commonwealth Criminal Code that the Prime Minister nominates as urgent amendments, the Commonwealth may introduce the Bill before the requirements set out in subclause (1) are fulfilled but must not seek the making of the amendments unless those requirements are fulfilled.

(3) Subclause (1) applies to a Bill or subordinate legislation that repeals or amends Chapter 2 only to the extent that the repeal or amendment applies only to Part 5.3.

(4) The Commonwealth will provide the other parties with the text of the proposed legislation.



(5) The Commonwealth is not obliged to introduce, make or support any legislation, including subordinate legislation, or to proceed with any legislative proposal, including a proposal relating to subordinate legislation, with which it does not concur.

(6) If approval is sought for amendments to a Bill that is at that time before the Commonwealth Parliament, the Commonwealth will use its best endeavours to give the other parties a reasonable time to consider and to comment on the proposed amendments.

(7) If approval is sought for amendments to a Bill that is at that time before the Commonwealth Parliament, then the other parties will use their best endeavours to respond within a time frame nominated by the Commonwealth.

(8) Approval for amendments must be sought, and responses from other parties must be provided, through the Prime Minister and Premiers and Chief Ministers.

## **Division 3 Regulations specifying terrorist organisations for the purposes of Part 5.3 of the Commonwealth Criminal Code**

### **3.4 Consultation on regulations specifying terrorist organisations**

(1) Before making a regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Commonwealth Criminal Code, the Commonwealth will consult the other parties about it.

(2) If a majority of the other parties object to the making of a regulation specifying a terrorist organisation within a time frame nominated by the Commonwealth and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

(3) The Commonwealth will provide the other parties with the text of the proposed regulation and will use its best endeavours to give the other parties a reasonable time to consider and to comment on the proposed regulation.

(4) The Commonwealth will also provide the other parties with a written brief on the terrorist-related activities of the organisation to be specified by the regulation and offer the other parties an oral briefing by the Director-General of Security.

(5) The other parties will use their best endeavours to respond within a time frame nominated by the Commonwealth.

(6) Approval for regulations specifying terrorist organisations must be sought, and responses from other parties must be provided, through the Prime Minister and Premiers and Chief Ministers.

## **Part 4 Ceasing to be a party**

### **4.1 State or Territory ceasing to be a party**

- (1) The failure of a State or Territory to remain a party does not terminate this agreement.
- (2) If a State or Territory ceases to be a party, this agreement will remain in force in relation to the remaining parties.
- (3) If a State or Territory ceases to be a party, the Commonwealth will, within three months, convene a meeting of the remaining parties for the purpose of negotiating such variations to this agreement as are necessary or convenient to take account of that fact (including variations relating to the voting arrangements).

***Signed for and on behalf of each of the parties by:***

The Honourable John Winston Howard MP (Prime Minister of the Commonwealth of Australia)

The Honourable Robert John Carr MP (Premier of New South Wales)

The Honourable Stephen Phillip Bracks MP (Premier of Victoria)

The Honourable Peter Beattie MP (Premier of Queensland)

The Honourable Michael Rann MP (Premier of South Australia)

The Honorable Dr Geoff Ian Gallop MLA (Premier of Western Australia)

The Honourable Paul Lennon MHA (Premier of Tasmania)

Jonathon Donald Stanhope MLA (Chief Minister of the Australian Capital Territory)

The Honourable Clare Martin MLA (Chief Minister of the Northern Territory)

## ***Appendix F***

### **National Archives of Australia (NAA) documents**

### **List of documents attached**

3. NAA (National Archives of Australia). 2012a. Cabinet Minute Submission 2458 Report of Sir Robert Mark on the Organisation of Police Resources in the Commonwealth Area, edited by Prime Minister and Cabinet Department. Canberra: NAA.
4. NAA (National Archives of Australia). 2012b. Cabinet; CO A12909, 1976, Decision No.1670 (MOG), Submission No.666: Commonwealth Police Force. Canberra: NAA.
5. NAA (National Archives of Australia). 2012c. Cabinet; CO A12909, Cabinet Minute, 1976, Decision No. 2093, Submission No.944: Commonwealth Police Force. Canberra: NAA.
6. NAA (National Archives of Australia). 2013a. Cabinet; CO A5915, Cabinet Minute, 1975, Decision 3433: Australia Police Bill. Canberra: NAA.
7. NAA (National Archives of Australia). 2013b. Cabinet; CO A5925, Cabinet Minute, 1975, Decision 3433, Submission No. 1656: Australia Police Bill. Canberra: NAA.

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## C A B I N E T M I N U T E

Canberra, 10 July 1978

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Decision No. 6153

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Submission No. 2458 - Report of Sir Robert Mark on the  
Organisation of Police Resources in  
the Commonwealth Area

The Cabinet agreed that:-

- (a) in principle, a single police force be established by incorporating the existing Commonwealth and A.C.T. Police Forces;
- (b) subject to discussion and agreement with the States on matters involving State Governments/  
Police Forces, the Force's broad roles include:-
  - (i) the policing of the A.C.T.;
  - (ii) that of a federal agency for investigating infringement of Commonwealth laws;
  - (iii) the co-ordination of training and the provision of support for counter terrorist activities;
  - (iv) Special Branch duties within Commonwealth Territory with a headquarters central co-ordinating and liaison unit with all Special Branches (including States) and other Federal agencies;

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(1)

## CONFIDENTIAL

2.

Decision No. 6153 cont'd

- (v) the escort of VIP's and liaison with States governments and forces for their protection;
- (vi) the policing, for the time being only, at airports; and
- (vii) secondment of Federal officers to the Narcotics Bureau of the Customs Branch of the Department of Business and Consumer Affairs and other Commonwealth investigative agencies;
- (c) the Minister for Administrative Services be authorised to make a statement along the lines of Appendix 2 of Attachment A to the Submission as soon as possible;
- (d) concurrently with, but having in mind, Mr Justice Hope's Protective Security Review and the Royal Commission of Inquiry into Drugs under Mr Justice Williams and subject to sub-paragraph (e) below:-
  - (i) detailed consideration of all recommendations of Sir Robert Mark's Report be undertaken by a small departmental group composed of the Department of Administrative Services (chair), Attorney-General's Department, Department of the Capital Territory, representatives of both the Commonwealth and A.C.T. Police Forces, Department of the Prime Minister and Cabinet and the Public Service Board, with other departments to be co-opted as necessary;

.../3

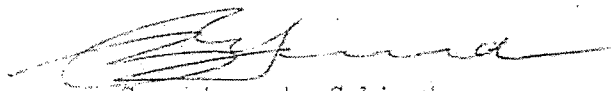
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## CONFIDENTIAL

3.

Decision No. 6153 (continued)

- (ii) discussions take place with the States on such matters as the respective roles of the States, Department of Transport and other Commonwealth authorities in the event of any transfer of Police functions to the States at airports and cost sharing arrangements for any common service agencies;
  - (iii) necessary legislation be drafted;
  - (iv) consideration be given to the name of the new force;
  - (v) discussions take place with A.C.T. Legislative Assembly and Police Associations; and
  - (vi) relationships with existing bodies or agencies be examined further;
- (e) the Minister for Administrative Services consult the Minister for the Capital Territory to develop a proposed plan of action for the formation of a Federal police force including the timing of any public announcements; and
- (f) the Minister for Administrative Services consult the Minister for Foreign Affairs in relation to duties of the proposed Federal police force in guarding diplomatic premises.

  
Secretary to Cabinet

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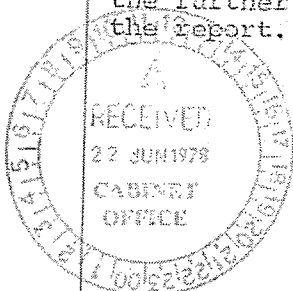
2458

Submission No. ....

## FOR CABINET

Copy No. 39

Title	REPORT OF SIR ROBERT MARK ON THE ORGANISATION OF POLICE RESOURCES IN THE COMMONWEALTH AREA.
Minister	R.G. Withers - Minister for Administrative Services
Purpose/Issues	To seek Cabinet's consideration of the report of the I.D.C. established by the Prime Minister to study the recommendations of Sir Robert Mark and in particular endorsement 'in principle' of the creation of a single federal police force and the further steps to be undertaken to implement the report.
Relation to existing policy	The Prime Minister's statement to the House of 23 February 1978 detailed a range of immediate measures to be introduced to protect Australia against terrorism and the commissioning of the 'Mark Report'. In line with the Government's objective to have a first class Commonwealth Police Force (Cabinet Decision 2093 of 17 December 1976).
Legislation involved	Legislation will be required if the 'in principle' decision to establish a single federal police force is accepted.
Urgency: Critical/significant dates	Legislation should be introduced no later than November, preferably passed in the Budget Session.
Consultation: Ministers/Depts consulted	Departments of the Prime Minister and Cabinet, Administrative Services, Finance, Capital Territory, Attorney-General's, Business and Consumer Affairs, Foreign Affairs, Transport, ASIO, Public Service Board and the Commonwealth and A.C.T. Police Forces.
Is there agreement?	Yes, subject to reservation of Commonwealth Police Force at <u>Appendix 1 of Attachment A</u> (page 17).
Cost this fiscal year	Amalgamation of the A.C.T. and Commonwealth Police Forces could be achieved without significant expenditure. Possible savings may be achievable through amalgamation.
year 2	
year 3	Major financial implications are related to the common services proposals not yet considered by the I.D.C.



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## Public Presentation - Minister's Proposals

1. (a) When and where is the decision to be announced?	In Parliament by the Minister for Administrative Services. Draft statement is attached as <u>Appendix 2 to Attachment A.</u>
(b) Is a draft press statement attached?	
(c) How widely is the announcement to be circulated?	As widely as possible.
2. (a) Is a press conference considered necessary?	Radio and television interviews will almost certainly be necessary. Newspaper reporters will also be briefed either individually or at a press conference if necessary.
(b) What media opportunities will be taken?	See 2(a) - each and every opportunity will be taken.
3. What supplementary material is required for backgrounding journalists, Members and special interest groups?	Background will be given on the sort of areas likely to be discussed with the States, as well as indications that such discussions will be held as quickly as possible. Arrangements will be made to allow journalists to contact Sir Robert Mark for his reaction.
4. (a) What prior consultation with State Governments or other official bodies is required?	The State Governments will be informed before the decision is announced. They will be assured that there will be full consultation to ensure <u>their</u> interests are protected.
(b) Which special interest groups should be advised of the announcement?	Police forces and associations, civil liberties groups, professors of law and political science, learned journals, etc.
5. What general or sectional support can be expected?	General support.
6. What criticism is anticipated and how will it be answered?	The States may be concerned about infringement of their own role and interests (see 4a). Civil libertarians and ethnic groups may be concerned at expansion of Commonwealth law enforcement agencies. Answers will be primarily: (1) the decision is an "in principle" only, which will require detailed discussions to ensure State interests are protected; (2) the decision is based on the recommendations of an eminent policeman, Sir Robert Mark; (3) it is in the interests of efficiency and public safety both as to terrorism and crime generally; (4) there is no intrusion into traditional State areas. The A.C.T. Legislative Assembly may also complain - Select Committee on Police Report is at Attachment B. It should be given an opportunity to participate in discussions as to handling the A.C.T. component of the new force. If its complaints are pressed, it will just have to be said that protection of public safety, etc in the seat of Government must be a Commonwealth responsibility and Mark himself made it clear that the existing situation is unsatisfactory.

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## THE ISSUES

To seek Cabinet's endorsement to the recommendations of the Interdepartmental Committee, established to study the Report and recommendations of Sir Robert Mark, including -

- (a) the creation of a single federal police force; and
- (b) the further steps to be taken to implement the Mark Report.

## BACKGROUND

2. The Prime Minister announced in the Parliament on 23 February 1978, as part of measures being implemented by the Government to counter terrorism, the appointment of Sir Robert Mark to advise on the organisation of police resources in the Commonwealth area and measures for protective security and counter terrorism.

3. Sir Robert's report was tabled in the Parliament on 13 April 1978 at which time the Prime Minister announced that the Government was putting the report to study. The I.D.C. was consequently established by the Prime Minister to report to Cabinet.

## CONSIDERATION OF ISSUES

4. The I.D.C. agreed that the cornerstone recommendation

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of Sir Robert Mark's Report is the creation of single federal police force.

5. In the light of experience of problems of overlapping between two Commonwealth forces in one Territory, and of Commonwealth/State co-operation problems, the I.D.C. endorses the proposal for a single federal force and suggests that the Government could make an 'in principle' decision on the matter without prior consultation with the States.

6. The I.D.C. considered that questions of use of the Defence Force in aid of the civil power and Commonwealth/State relations in protective security matters are primarily matters for Mr Justice Hope's Protective Security Review. A number of the Mark recommendations touch other aspects of the Hope Review. However the I.D.C. considered that those recommendations of Sir Robert Mark would be examined concurrently by it and the Hope Review.

7. The Mark recommendations which substantially affect State interests should not be adopted until after consultation with State Governments.

### OPTIONS

8. The options canvassed by the I.D.C. are contained in paragraphs 10 and 11 (page 11) and Appendix 1 (page 15) to its Report at ATTACHMENT A. Appendix 1 also includes

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a minority option of the Commissioner, Commonwealth Police (page 17).

### THE PUBLIC IMPACT OF THE RECOMMENDATION

9. Whilst press reports in the States have been for the most part favourable since the Report was tabled on 13 April, 1978, the Canberra press and the A.C.T. Legislative Assembly have expressed concern over the proposed single federal police force. The A.C.T. Legislative Assembly has formed a Select Committee on Police to examine the recommendations of Sir Robert Mark.

### FINANCIAL AND EMPLOYMENT CONSIDERATIONS

10. The I.D.C. considered that the creation of the single federal police force could be achieved without major financial and employment implications.

### COMMONWEALTH/STATE/LOCAL GOVERNMENT RELATIONS

11. The determination by Cabinet of the proposal to create a single federal police force will enable consultation with the States to commence on the force's roles and the other recommendations of Sir Robert Mark.

12. The State Premiers should be advised of the Government's decision on the single federal police force before it is announced publically.

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13. The I.D.C. noted in paragraph 15 (page 12) that the role of the A.C.T. Legislative Assembly will need to be considered in relation to the policing of the A.C.T.

### PUBLICITY

14. The I.D.C. recommends the Cabinet endorse the issue by the Minister for Administrative Services of the statement to the Parliament at Appendix 2 of its Report at ATTACHMENT A (page 18).

### LEGISLATION

15. Legislation will be required if the 'in principle' decision to establish a new police force is accepted. Introduction of this legislation should be no later than early November (it is highly desirable that legislation be passed before the end of the Budget sittings).

### CO-ORDINATION

16. The I.D.C. was made up of representatives from the Departments of the Prime Minister and Cabinet, Administrative Services, Finance, Capital Territory, Attorney-General's, Business and Consumer Affairs, Foreign Affairs, Transport, Public Service Board and the A.C.T. and Commonwealth Police Forces.

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## RECOMMENDATIONS

17. I recommend that Cabinet in accordance with the recommendations of the I.D.C., agree

- a) 'in principle' that a single police force be established by incorporating the existing Commonwealth and A.C.T. Police Forces;
- b) that, subject to discussion and agreement with the States on matters involving State Governments/Police Forces, the Force's broad roles should include:
  - (i) the policing of the A.C.T.;
  - (ii) that of a federal agency for investigating infringement of Commonwealth laws;
  - (iii) the co-ordination of training and the provision of support for counter terrorist activities;
  - (iv) Special Branch duties within Commonwealth Territory with a headquarters central co-ordinating and liaison unit with all Special Branches (including States) and other Federal agencies;
  - (v) the escort of VIP's and liaison with States governments and forces for their protection;
  - (vi) the policing, for the time being only, at airports; and
  - (vii) secondment of Federal officers to the Narcotics Bureau of the Customs Branch of the Department of Business and Consumer Affairs and other Commonwealth investigative agencies.

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- c) that the Minister for Administrative Services be authorised to issue the statement at Appendix 2 of ATTACHMENT A to Parliament as soon as possible; and
- d) that officials be authorised to implement the following steps concurrently with Mr Justice Hope's Protective Security Review:
- . Detailed consideration of all recommendations to be commenced. This should be undertaken by a small departmental group which we recommend should be composed of the Department of Administrative Services, Attorney-General's Department, Department of the Capital Territory, representatives of both the Commonwealth and A.C.T Police Forces, Department of the Prime Minister and Cabinet and the Public Service Board, with other departments to be co-opted as necessary.
  - . Discussions to take place with the States on such matters as the respective roles of the States, Department of Transport and other Commonwealth authorities in the event of any transfer of Police functions to the States at airports and cost sharing arrangements for any common service agencies.
  - . Legislation to be drafted - Introduction to be no later than early November (it is highly desirable that legislation be passed before the end of the Budget sittings).
  - . Consideration of the name of the new force.

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- . Discussions with A.C.T. Legislative Assembly and Police Associations.
- . Relationships with existing bodies or agencies.

(R.G. WITHERS)

12 June 1978

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ATTACHMENT A

INTERDEPARTMENTAL COMMITTEE TO EXAMINE THE RECOMMENDATIONS  
OF SIR ROBERT MARK'S REPORT ON THE ORGANISATION OF POLICE  
RESOURCES IN THE COMMONWEALTH AREA

BACKGROUND

Consideration of proposals to incorporate the ACT and Commonwealth Police Forces goes back to 1955. The present Government has considered the role and functions of the Commonwealth Police Force and, by Cabinet Decision No. 2093 of 17 December 1976, set out new guidelines for its operation and roles.

2. As a result of the Hilton bomb incident the Government made a number of decisions in relation to Protective Security and Counter-Terrorism one of which was to invite Sir Robert Mark a retired Commissioner of the London Metropolitan Police (New Scotland Yard) to Australia to advise the Government on the organisation of police resources in the Commonwealth area and measures for protective security and counter-terrorism. The Prime Minister tabled Sir Robert Mark's Report on 13 April 1978.

3. An Interdepartmental Committee was then established, chaired by the Prime Minister's Department, to study the Report and recommendations and to draft an appropriate Cabinet Submission for early consideration. The IDC first agreed that prior to a detailed examination of the Report, the primary objective would be to examine and report to Cabinet on whether, as a matter of principle, there should be created a new force by the incorporation of the existing Commonwealth and ACT Police Forces as recommended by Sir Robert Mark. The Committee agreed that this was the Report's major recommendation and needed a decision by the Government before the other recommendations were examined in detail. The IDC in its examination of the fundamental question also considered what the new force's responsibilities and functions should be in light of Sir Robert Mark's recommendations. To assist it in this examination, working parties were established which examined the Report's recommendations in relation to Airport Security and V.I.P. Protection and Counter Terrorism. The views of the working parties have been taken into account in this paper.

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4. The Committee also had in mind the Prime Minister's view that recommendations relating to involvement of the Defence Force in aid to the civil power and Commonwealth/State relations were primarily matters for the Protective Security Review headed by Mr Justice Hope. The Committee considered that Sir Robert Mark's other recommendations could be examined independently of Mr Justice Hope's review.

Consideration of the issue on whether there should be an Australian Federal Police Force.

5. Sir Robert Mark states that a Federal Police Force must have a metropolitan territorial base and that the maintenance of a separate force for the ACT is, from a police point of view, unjustifiable. He also hinges better nationwide police co-operation on the existence of a single federal force. In the light of experience of the problems of overlapping between two Commonwealth forces in one Territory, and of Commonwealth/State co-operation problems, the IDC endorses the proposal for a single force and suggests that the Government could make an "in principle" decision on the matter without prior consultation with the States.

6. Sir Robert Mark recommended (paragraph six of the Report) that initially, the new force should have seven roles, reducible in the long-term to six. They are as follows:

- "(i) the policing of the ACT;
- (ii) that of a federal agency for investigating infringement of Commonwealth laws;
- (iii) the co-ordination of training and the provision of support for counter terrorist activities;
- (iv) Special Branch duties within Commonwealth Territory with a headquarters central co-ordinating and liaison unit with all Special Branches (including States) and other Federal agencies;
- (v) the escort of VIP's and liaison with States governments and forces for their protection;

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- (vi) the policing, for the time being only, at airports; and
- (vii) secondment of Federal officers to the Narcotics Bureau of the Customs Branch of the Department of Business and Consumer Affairs and other Commonwealth investigative agencies."

The IDC was in broad agreement that these roles are part of those to be performed by the new force. It also agreed that the full functions could be worked out at a later date when the total implication of federal policing could be examined in depth. In this regard the Committee noted that Cabinet had previously considered the role of the Commonwealth Police (Decision No. 2093 of 17 December 1976) and that work had been completed by officials on the establishment of guidelines for the investigatory functions of Commonwealth Police. The Committee suggests that this earlier decision should form the basis for the later examination.

7. Some of the functions would require consultation with the States (particularly (iii), (iv), (v) and (vi). In respect of the policing of airports the working groups felt that a Federal Force was necessary, particularly the security sensitive airports e.g. Capital City and International Airports as this would ensure a consistent approach which may be difficult to achieve in formal agreements with the States. A minority view in the working party was that airport policing would not be adversely affected by State Police having the prime responsibility for all general police duties.

8. The Committee was mindful of the fact that the general thrust of Sir Robert Mark's report was the utilisation of State Police Forces where the function to be carried out (within the State jurisdiction) was one which fitted within their recognised role. It also noted that the working group's report was not unanimous and that there appeared to be no major legal impediment against the assumption by the States of the function of policing at airports. However, a decision on policing of airports is not required as a prelude to the decision to have only one Police Force and can be taken in the light of discussions with the States.

9. In respect of the working group on VIP Protection and Counter Terrorism no reason was advanced as to why there should not be a single police force. There was a minority viewpoint that prime responsibility for VIP Protection should remain with the new force but again this need not be resolved at this stage.

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Options

10. Sir Robert Mark sets out three options (from a police view) for the organisation of police resources in the Commonwealth area. They are (paragraph six of Sir Robert Mark's Report):

- (i) expand the role of Compol to include the whole of the function of the A.C.T. force;
- (ii) expand the role of the A.C.T. force to include the function of Compol; or
- (iii) abolish both forces and create a new police organisation.

The Committee agreed that in view of previous attempts the implementation of options 1 and 2 would cause too much controversy when other equally viable but less sensitive options were available.

11. The IDC therefore saw only two real alternatives resulting from Sir Robert Mark's Report. They were:

- . to leave the existing ACT and Commonwealth Police Forces as they are; or
- . to establish a new force by the abolition of the existing forces and the creation of a new police organisation.

The IDC endorses the latter view. Arguments in favour of each alternative are at Attachment A.

Financial Considerations

12. The Committee has not attempted to cost the recommendations and suggestions made by Sir Robert Mark, principally because there is no firm basis on which costs could be assessed at present. However, the Committee is of the opinion that at least in the short term amalgamation of the Commonwealth and ACT Police Forces probably could be achieved without an significant increase in the cost of operating the two forces independently. (The Committee noted that the combined cost of the Forces in 1977-78 is \$45.1 million and that, on present indications this will rise to about

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\$54.8 million in 1978-79). The Committee does not discount the possibility that amalgamation could lead to savings in some areas, but considers that any such savings would be more than offset by the expanded role envisaged in the Mark Report for a combined Force. The Committee noted that the major financial implications would relate to the other Mark recommendations.

#### Employment Considerations/Implications

13. In the short term there are no significant employment implications. Employment implications in the longer term will be dependent on the eventual decisions and the nature and extent of the roles of the new force (e.g. entry into fields such as computer and white collar crime).

#### Commonwealth, State Local Government Relations

14. At this stage no State Governments have been consulted but if the principle of a new force is accepted detailed discussions will be needed to implement some of the roles envisaged.

15. The role of the A.C.T. Legislative Assembly will need to be considered in relation to policing in the A.C.T. The functions of the A.C.T. Police were included under the powers proposed for transfer to the Assembly which has expressed some concern at the proposal to establish a single force. The Government has yet to take a decision on the transfer, if any, of powers to the A.C.T. Legislative Assembly.

#### Co-ordination

16. The following Departments were either on the IDC or were consulted in relation to its report: Prime Minister and Cabinet, Administrative Services, Finance, Capital Territory, Attorney-General's, Business and Consumer Affairs, Foreign Affairs, Transport, ASIO, Public Service Board and representatives from both the Commonwealth and A.C.T. Police Forces.

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Legislation

17. Legislation will be required if the Government accepts the "in principle" decision to establish a new force by the incorporation of the existing Commonwealth and A.C.T. Police Forces into the new force.

Timing and Next Steps

18. The "in principle" decision should be announced as soon as practicable after it has been made to allow for the following steps to be taken:

- Detailed consideration of all recommendations to be commenced. This should be undertaken by a small departmental group which we recommend should be composed of the Department of Administrative Services, Attorney-General's Department, Department of the Capital Territory, representatives of both the Commonwealth and A.C.T. Police Forces, Department of the Prime Minister and Cabinet and the Public Service Board, with other departments to be co-opted as necessary.
- Discussions to take place with the States on such matters as the respective roles of the States, Department of Transport and other Commonwealth authorities in the event of any transfer of Police functions to the States at airports and cost sharing arrangements for any common service agencies.
- Legislation to be drafted - Introduction to be no later than early November (it is highly desirable that legislation be passed before the end of the Budget sittings).
- Consideration of the name of the new force.
- Discussions with A.C.T. Legislative Assembly and Police Associations.
- Relationships with existing bodies or agencies.

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Sensitivity will need to be given to discussions with the A.C.T. Legislative Assembly and Police Associations to avoid unnecessary delay in implementation.

Recommendations

19. It is recommended that Cabinet agree -
- (1) "in principle" that a single police force be established by incorporating the existing Commonwealth and A.C.T Police Forces.
  - (2) That the force's broad roles should include those set out in paragraph six of this submission.
  - (3) that the Minister for Administrative Services be authorised to issue the attached statement to Parliament as soon as possible.
  - (4) that officials be authorised to implement the next steps as detailed in paragraph eighteen of this submission.

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APPENDIX 1 to  
ATTACHMENT A

ARGUMENTS IN SUPPORT OF POSSIBLE ALTERNATIVES

1. The IDC considers that there are two main alternatives which might be adopted in relation to the delivery of police services in the Commonwealth arena. These are:

- (a) to continue to have a Commonwealth police force with responsibilities extending in essence to dealing with crimes against Commonwealth laws and Territorial police forces responsible for dealing with crimes against the person or property in those geographical areas;
- (b) the development of a national police force along the lines of that set out for the new force by Sir Robert Mark.

There are, of course, variations within these main alternatives. The Commissioner of the Commonwealth Police Force has also suggested another alternative and his arguments are set out in paragraph three of this Attachment.

2. Some arguments which can be advanced to support the two main alternatives are as follows:

- (a) leave the two forces much as they are
  - . avoids the traumas inevitably involved in major change
  - . scope exists to further develop existing institutions without requiring a major change in the structure of those police forces
  - . while greater co-ordination is necessary, there is scope to introduce this without a major change in existing arrangements and possibly at less initial expense
  - . there is an expectation in some circles (in particular the A.C.T. Legislative Assembly) that with the possible devolution of local government responsibility in the A.C.T. there should be a handing over of law and order functions to the A.C.T. Legislative Assembly

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APPENDIX 1 to  
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- the establishment of a national police force may give rise to concern within State Governments as to its role in relation to State policing of Commonwealth law.
- Cost implications in the establishment of a new force are difficult to assess and could be substantial in the longer-term particularly in regard to the financing of Common Services to the Nation.

(b) establish a national police force

- while there have been attempts to devise arrangements to satisfactorily deal with changes in patterns of crime and developments in administration of law and order, there is a requirement for one national body to deal with national (and territorial) law and order.
- there is greater scope for introducing economy and efficiency in relation to staffing and equipment e.g. technical units to service both existing and A.C.T. Police and the CPF.
- some of the recent problems in handling the guarding of diplomatic residences and protection of VIP's would be overcome. Similarly there could be scope to introduce better arrangements for handling of terrorism and other attacks in the A.C.T.
- while there might be some short-term costs there would be longer-term advantages of a visible kind e.g. it would be reasonable to expect a more effective policing of computer and white collar crime to result from a more rational use of police resources.
- there would be a widening of the range of experience for both A.C.T. and Commonwealth Police Force members
- jurisdictional problems between A.C.T. and Commonwealth police forces would be overcome.
- with the additional flexibility offered by a larger police force and scope for rationalising equipment bids there would be a lessening of pressure on resources.

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Alternative Suggested by the Commissioner of the  
Commonwealth Police

3. A further alternative put forward by the Commissioner, Commonwealth Police, was that if the intention was to abandon the concepts approved in Cabinet Decision 2093 and to follow the recommendation of the roles in the Mark Report without amendment, then it would be preferable to create a federal bureau of investigation which would investigate offences against Commonwealth Law, fulfil Special Branch and Crime Intelligence roles, provide V.I.P. security and anti-terrorist specialist back-up squads, maintain Interpol and provide common police services. This would then leave the uniform policing duties to the State and Territorial forces.

The Commissioner saw this as preferable because under the Mark proposals there would not be a real federal police force in the States while in the A.C.T. the police force would be a territorial one without any real national experience or outlook.

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APPENDIX 2 to  
ATTACHMENT A

## STATEMENT TO THE PARLIAMENT BY THE MINISTER FOR ADMINISTRATIVE SERVICES ON THE ORGANISATION OF POLICE RESOURCES IN THE COMMONWEALTH AREA

Honourable Senators will be aware that the Government on 23 February 1978 announced the appointment of Sir Robert Mark, the former Commissioner of the Metropolitan Police, to advise on the organisation of police resources in the Commonwealth area.

Sir Robert's report was tabled in the Parliament on 13 April and since then has been under active consideration by the Government.

The principal recommendation made by Sir Robert was for the creation of a new single federal police force incorporating the existing A.C.T. and Commonwealth Police forces. Sir Robert stressed that a number of other law enforcement functions should not be taken over by the new police force. He also suggested a number of arrangements which while allowing creation of national commonwealth police services would not abrogate the rights of the States.

In framing his report Sir Robert was aware of the difficulties associated with having two Commonwealth forces in the one Territory, and the need to cope with the increasing complexity and volume of terrorist like acts of violence and crimes against the Commonwealth (particularly its welfare programs). Dealing with these problems he said:

"...there is, therefore, no choice but to create a new force that incorporates the two forces as soon as reasonably possible."

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In studying his report the Commonwealth has taken a number of things into consideration. Firstly, the number of crimes against the Commonwealth has risen considerably in recent years. For example, the Commonwealth Police had reported to them in 1972/73, 20,000 crimes compared to 37,000 reports during the last 12 months. So have the number of crimes of violence of a political nature. For example, there have been eight attacks on diplomatic premises or people since July 1977. In addition, there have been 15 incidents of violence against related communities. The tragedy of such incidents, of course, is that often the real victims are not the intended ones. All too often the victim is the innocent passerby. Just as white collar crime is a crime against all taxpayers, so too is terrorism a crime against all Australians.

It is in this context that the Government has been considering Sir Robert Mark's report. As a result, the Government has approved - in principle - the creation of a single federal police force incorporating the A.C.T. Police Force and the Commonwealth Police Forces as Sir Robert proposed. The exact role and functions of the force will not be decided until we have held discussions with the States, and the Prime Minister has now written to all Premiers seeking their co-operation in arranging discussions as quickly as possible. The Commonwealth is of course aware that the primary responsibility for providing police services within the States is one for State Governments, and we have absolutely no intention of interfering with those arrangements. The discussions with the States will be aimed at ensuring the traditional role of the State police forces is not jeopardised or altered in any way.

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Subject to this discussion it is felt that the new force would have broadly those roles assigned to it in Sir Robert Mark's report - that is:

- . the policing of the A.C.T.
- . that of a federal agency for investigating the infringement of Commonwealth laws
- . the co-ordination of training and the provision of support for counter terrorist activities
- . Special Branch duties within Commonwealth territory with a headquarters central co-ordinating and liaison unit with all Special Branches including States and other Federal agencies
- . the escort of VIP's and liaison with State Governments and police forces for their protection
- . the policing - for the time being only - at airports; and
- . the secondment of federal officers to the narcotics bureau.

As I have already mentioned, these arrangements will require the support and co-operation of the states. The Commonwealth is anxious on its part to co-operate and we are hopeful that the States will also agree to discuss these matters.

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I stress that the decision taken by the Government is at this stage an "in principle" one only. As a consequence a detailed consideration of all the Mark recommendations can now begin. Initially this will be carried out at the interdepartmental level. The exact extent to which Sir Robert Mark's recommendations are to be implemented will be considered by the Government after this consideration and the necessary consultation with the States has taken place.

One area which Sir Robert did refer to was the question of defence force involvement in aid of the civil power. Because this is the subject of another inquiry by Mr Justice Hope the Government has not considered this aspect of Sir Robert's report.

The creation of the new force will require the preparation of legislation. It is the Government's hope that this legislation can be prepared and introduced in the Budget sittings of Parliament.

The decisions will naturally also affect the A.C.T. Legislative Assembly. In his report Sir Robert suggested machinery by which the Assembly could participate in the control of the police within the territory. I would expect this aspect of the report to be discussed in detail with the Assembly in the near future.

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Mr President, the Government and I believe the community accept the necessity for action along the broad lines recommended by Sir Robert. At the same time it is essential that the community itself be involved in decisions which relate to the community's safety. It is for this reason that the Government has decided to inform the Parliament of this decision in principle and to embark on the fullest possible discussion and consultation to provide Australia with an effective and efficient federal police force which at the same time ensures the necessary safeguards for the States and the rights of the individual.

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ATTACHMENT B



SELECT COMMITTEE

ON

POLICE ORGANISATION

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

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PERSONNEL OF THE COMMITTEE

Chairman . . . . Mr L. Vivian

Members . . . . Mr J. Clements  
                    Mr H. Hird  
                    Mr J. Leedman

Clerk to the  
Committee . . . . Mr P. Rumsary

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## INTRODUCTION

The Select Committee on Police Organisation was appointed by resolution of the Assembly on 17 April 1978. The Committee was directed to inquire into and report on the Organisation of Police Resources in the Commonwealth area and other related matters. This matter was the subject of a report prepared for the Minister for Administrative Services by Sir Robert Mark, G.B.M., Q.P.M.

2. The matter was raised in the Assembly as a matter of public importance because one of the major recommendations of the report is to abolish the Commonwealth and the ACT Police forces and create a joint police force called the Australian Federal Police. Members expressed concern at this proposal claiming that by absorbing the ACT Police Force into a national body, the ACT community would lose contact with its police force and there would be a danger that ACT Police matters would not have a high priority in a national force.

3. At its first meeting the Committee decided that its task should not be to undertake detailed consideration of the technical findings of the report dealing with the specialist areas of police work but saw its role in the organisational aspects of the proposed abolition of the two forces and the creation of one composite national force, and the effect that that proposal would have on the community and the maintenance of law and order within the Territory.

## THE MARK REPORT

4. The Committee wishes to express at the outset its highest regard for Sir Robert Mark and for the excellent report which he produced in his short stay in Australia. The Committee recognises the professional skill and tact with which he performed his investigation. Essentially, the report deals with two major areas of concern:

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- (1) The organisation of police resources in the Commonwealth area in particular to resolve the dilemma created by the overlapping functions of two police forces within the Territory.
- (2) Measures for the protective security of politicians, VIP's, Commonwealth properties and embassies, and the creation of a counter terrorism force capable of operating on a nation-wide basis.

## THE INQUIRY

5. The Committee resolved at the outset that it should contact both the Commissioner for ACT Police and the Commissioner for the Commonwealth Police and invite them to appear before the Committee to outline what impact the Mark Report would have on their respective forces.
6. The Commissioner for ACT Police appeared before the Committee on 16 May 1978 and provided valuable assistance to the Committee. The Commissioner for Commonwealth Police declined to appear before the Committee but offered to answer specific questions relating to the Commonwealth Police Force. The Committee also wrote to the Police Associations of both the ACT Police Force and the Commonwealth Police Force. Both of the Associations provided valuable information to the Committee. The Committee wishes to express its appreciation to both the Commissioners and the two Associations for their assistance during the inquiry.
7. After considering the evidence presented to it, the Committee is convinced that the identity of the local Police Force should be preserved. The Committee can only endorse the remarks made by Sir Robert Mark in his opening paragraph:

"Some aspects of policing are, however, common to all free society; for example, the extent to which the effectiveness of a police force depends on public confidence and support arising from its accountability."

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8. The Committee contends that such public confidence exists here in the Territory. It is a unique relationship based on sound policies of effective public relations supported by a policy of providing neighbourhood patrols in which the policemen get to know the neighbourhood and the people. This policy has created a relationship based on mutual trust which, in the main, is responsible for the high morale and efficiency of the ACT Force. To this extent, the Committee disagrees with Mark's statement in paragraph (4) of his report that both the Commonwealth and the ACT Force are lacking in important factors essential for effectiveness and public confidence. He states that neither force is able to project a satisfactory and distinct public image. Obviously, this statement is incorrect because of the high regard in which the ACT citizens hold their local Police Force. To support this claim, the Committee refers to a survey conducted by McNair Anderson and Associates in December 1976 when people in the capital cities were asked to express their feelings as to whether their Police Forces were doing a good job. In the ACT, 83.8% stated that the ACT Police were doing a good job, 13.8% of people thought that they were doing a fair job.

9. It is difficult to comment on the public image of the Commonwealth Police because of the infrequent public contact made with them in their day-to-day affairs. They perform an essential duty at airports and Commonwealth buildings but the main part of their work is not in the public eye.

10. The Committee also disagreed with Mark's comments in paragraph (5) in which he states that the ACT Police Force has little crime and few traffic problems. The Committee wishes to refer to a publication entitled "Crime and Justice in Australia" produced by the Australian Institute of Criminology and edited by Dr D. Biles, Assistant Director (Research) of the Australian Institute of Criminology. The book contains some useful statistics on various crime in Australia. Some of the statistics are worth quoting as they indicate that the ACT, on a per capita basis, has a

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crime rate comparable with some, and in some cases worse than that in the States. In homicide cases in 1972, the ACT had 4 cases resulting in a percentage of 2.5% per 100,000 of the population compared with New South Wales 134 cases or 2.9% per 100,000 population and South Australia, 28 cases or 2.4% per 100,000 population. In 1973, again in homicide, the rate for the ACT was 4 cases with 2.4% per 100,000 population, New South Wales, 189 cases at 4.0% per 100,000 population and South Australia, 29 cases at 2.4% per 100,000 population. In serious assault cases reported, the ACT has an unenviable record with its percentage for the years 1964-1973 being substantially higher than the percentage for New South Wales, Queensland, South Australia, Western Australia and Tasmania. In cases of robbery reported during the period 1964-1973, the ACT with 8.66% per 100,000 population, was higher than all States except New South Wales, Victoria and Northern Territory.

11. The above statistics and others for various forms of crime are appended<sup>(1)</sup> to this report. The statistics reported do not support Mark's view that the ACT Police have little crime. On the contrary, for a population of 215,000 persons, the crime rate is unfortunately comparable to the States.

## THE MAJOR PROPOSAL

12. The Committee saw as the major proposal of the Mark Report the recommendation to abolish the two forces and create the National Police Force. The Committee agrees with Mark that there ought to be an end to the overlapping of functions of the two forces in the Territory. To this end, it agrees with the proposal to abolish the two forces but disagrees with the proposal to embody both forces into a National Police Force. The Committee can see no advantage for the people of the ACT in having their force embodied into a National Police Force. The Committee feels that if such an amalgamation took place, the people in the Territory would lose the unique relationship which they have with their local force. The Committee wishes to stress again the high regard

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(1) See Appendix I.

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and confidence with which the community holds its local force and it is considered that if the force becomes part of the National Police Force, territorial police matters may be put aside with priority given to National Police matters.

13. It could be argued that the Territorial Police Liaison Committee suggested by Mark could represent the ACT community's views on local police matters and as Mark says, provide a channel for communication and exchange of opinion about matters affecting the relationship between the police and public. The Committee disagrees with this concept.

In the first place he says that the Committee should consist of the Deputy Commissioner and eight elected members of the local governing body. Who would the eight elected persons be? If they would be elected persons from the ACT Legislative Assembly, then he is in conflict with his own description of the art of policing a free society (Mark Report, paragraph 9). In that paragraph, Mark states that "administratively a police force should be seen to be accountable to government, either State or Federal. Operationally, it should be seen to be as free as possible from political influence." Does he imagine that eight elected persons from the ACT Legislative Assembly serving on the Territorial Police Liaison Committee and wishing to make comment on the effectiveness of police operations in the Territory, would be impartial to political influence? The Committee thinks that they would have considerable difficulty in being impartial.

14. However, the Committee is concerned that the community should have an effective input into the general field of community-Police relations. The Committee believes that this can be achieved by the creation of a commission which would consist of the Police Commissioner, two representatives from the Legislative Assembly and two Ministerial nominees. The Committee feels that this commission should stand between the Commissioner for Police and the Minister and would strengthen relations between the community and the Police Force.

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15. The Committee firmly believes that there is a need for a National and a Territorial Police Force. The Committee believes that there is a need for both forces roles and responsibilities to be clearly defined to avoid ambiguity and confusion. Indeed, the Committee believes that such a clarification of responsibilities could be achieved by adopting the following approach.

16. That the ACT Police Force be made responsible for all law enforcement within the ACT. To achieve this, there should be an amalgamation of the two forces to enable the ACT Force to obtain the manpower necessary for the task and be responsible to the Minister for the Capital Territory. The remaining manpower can be formed into a National Police Force to operate in similar fashion to the Federal Bureau of Investigation. This force could concentrate on the specialist tasks outlined in the Mark Report. Such tasks would include:

- (1) special counter terrorist squad formation;
- (2) specialist forensic and computer research technology; to assist all states and territorial police forces;
- (3) develop special liaison with customs officers and A.S.I.O. on national security matters;
- (4) develop a special Branch-style of operation similar to Scotland Yard to assist as required with the more complex investigations involving National Security.

17. The Committee agrees with Mark that the Federal Government has to become involved in the maintenance of law and order on a national scale. A National Police Force can work in close co-ordination with both State and Territorial Police Forces in its specialities as outlined above. This co-operation between the State or Territorial forces and the National Police would be strengthened through Mark's suggestion that members of the National Force be seconded to State and Territorial Police Forces for police training, whilst State and Territorial Police could be seconded to the National Force

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for specialist training. The advantages of the broader training and closer liaison between the forces would greatly enhance national security for all Australians. Accordingly, the Committee strongly supports the establishment of a National Police Force responsible to the Minister for Administrative Services.

## CONCLUSION

18. For the reasons outlined in this Report, the Committee feels that if the ACT Police Force were to be absorbed into a National Police Force, even with a Territorial Liaison Committee, it would represent an unsatisfactory situation for citizens of the ACT. It is the right of these people as in all of the States of Australia, to have an autonomous police force identified with the people enjoying a mutual confidence in each other. This state of affairs currently existing in the ACT, promotes efficiency and good morale for the policeman with the resulting healthy respect from the community.

## RECOMMENDATIONS

19. Your Committee recommends:

- (1) That there should be a single autonomous police force for the ACT to deal with all Police matters in the ACT.
- (2) That the new ACT Police Force be established by incorporating appropriate personnel from the Commonwealth Police Force to enable them to carry out their territorial police functions.
- (3) That a National Police Force be established from the remainder of the Commonwealth Police Force to perform the specialist tasks referred to in paragraph (16).

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RECOMMENDATIONS (Continued)

(4) That an ACT Police Commission be formed consisting of the Police Commissioner, two Ministerial nominees and two Members of the ACT Legislative Assembly, and that such a commission should be responsible to the Minister for all police matters in the ACT.

(5) That these recommendations and the report be transmitted by message to the Minister.

9 June 1978

(I.F. VIVIAN)  
Chairman

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Copy No. 30.....

## C A B I N E T M I N U T E

Canberra, 17 December 1976

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Decision No. 2093

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Submission No. 944 - Commonwealth Police Force

The Cabinet agreed, further to Decision No. 1607 (MOG) of 6 October 1976, which endorsed the objective of a first class Commonwealth Police Force, experienced and competent in the investigation of crimes against the Commonwealth, that :-

- (a) as a general principle, the Commonwealth Police Force should be responsible for the investigation of criminal offences in the Commonwealth sphere subject to the exceptions and qualifications specified in paragraphs 14 to 21 of the Report of Interdepartmental Committee on the Commonwealth Police Force attached to Submission No. 944 and identified in subparagraphs (c) to (h) & (j) below;
- (b) guidelines following this principle should be established by individual negotiations between the Department of Administrative Services and all Departments and authorities; subject to

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## CONFIDENTIAL

2.

DECISION NO. 2093 (Contd)

- these guidelines Departments and authorities would seek police assistance whenever there are grounds to suspect that an offence had been committed or was about to be committed;
- (c) the 1966 guidelines setting out the demarcation of functions between the Commonwealth Police Force and the Special Reports Branch, Department of Immigration and Ethnic Affairs, at Attachment A to this Decision be adhered to;
- (d) the division of investigative work between Service Police and the Commonwealth Police Force be as set out in Attachment B to this Decision and the precise operation of this arrangement be subject to future negotiations and agreement between each Service and the Department of Administrative Services;
- (e) the professional and specialised nature of tax investigation be recognised and that the area of the Commonwealth Police Force involvement in taxation investigation is satisfactorily defined by existing arrangements;
- (f) while the present investigative arrangements in the Health area should continue, the scope for using the Commonwealth Police Force more fully should be explored;

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3.

Decision No. 2093 (Contd)

- (g) while there is a need for continued use of investigative officers in the Postal and Telecommunications areas, the scope for greater involvement by the Commonwealth Police Force, either independently or in conjunction with Departmental investigators, should be explored;
- (h) the scope for increased involvement by Commonwealth Police Force in some aspects of Bankruptcy and Trade Practices investigations should be explored;
- (i) in respect of sub-paragraphs (c) to (h) above any overlap of responsibilities be resolved by discussions between the appropriate Ministers and if necessary the Prime Minister;
- (j) there be no transfer of criminal investigative work from the Customs and Narcotics areas of the Department of Business and Consumer Affairs;
- (k) subject to satisfactory arrangements between the Ministers for Administrative Services and Business and Consumer Affairs, Commonwealth Police be placed in the narcotics area of the Department of Business and Consumer Affairs to undertake investigative work;
- (l) the Commonwealth Police Force should undertake some of the investigative work currently referred by Commonwealth Departments and authorities to State and Territory Police;

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4.

Decision No. 2093 (Contd)

- (m) the Commonwealth Police Force should normally be the agency charged with investigating criminal offences under new Commonwealth laws; and
- (n) the possibility of channelling further investigative work to the Commonwealth Police Force should be reconsidered in about two years when developments within the Force itself and any changes in other circumstances can be taken into account.

## 2. The Cabinet also agreed that :-

- (a) the Commonwealth Police Force should continue to develop their professional expertise in specialised fields of law compliance, e.g. VIP escort and airport police;
- (b) the Commonwealth Police Force should retain a guarding role, including the guarding of Defence and joint establishments, perhaps in a separate division, with appropriate standards of entry and training and with provision for transfer, etc., to other areas of the Force;
- (c) the Commonwealth Police Force should be withdrawn from debtor location, process serving and bailiff duties as soon as alternative properly trained staff can be made available;
- (d) early study be given to the recommendations of the Royal Commission on Intelligence and Security in the area of intelligence co-ordination;

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5.

Decision No. 2093 (Contd)

- (e) before new common police services are approved or existing services further developed, specific proposals should be the subject of detailed study as to their advantages and costs;
- (f) selection criteria and entrance standards for the various areas of the Commonwealth Police Force should be reviewed;
- (g) the training of the Commonwealth Police Force should accord with the high standard envisaged for the Force;
- (h) a review should be undertaken of the structure of the Commonwealth Police Force, including the possibility of statutory appointments for the senior officers of the Force;
- (i) subject to sub-para (e) above, an interdepartmental committee, chaired by the Secretary, Department of Administrative Services, or his nominee, with core membership from the Departments of Prime Minister and Cabinet, Attorney-General's, and the Public Service Board with other Departments being represented where their interests are affected, be set up to resolve operation problems and matters of general co-ordination; and
- (j) for co-ordination with State Police Forces, existing machinery such as the Conference of Police Commissioners should be utilised as much

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6.

Decision No. 2093 (Contd)

as possible, early opportunity being taken to explain to the States the precise scope of the new revised role determined for the Commonwealth Police Force.

*W. Hamer*  
Secretary to Cabinet

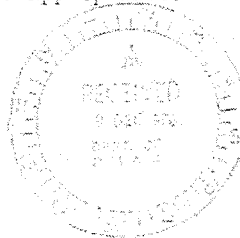
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## FOR CABINET

Title	COMMONWEALTH POLICE FORCE
Minister	THE PRIME MINISTER
Purpose	To seek Cabinet approval of the recommendation of a report of an IDC established to investigate possible ways of achieving the objective of a first class Commonwealth Police Force.
Relation to existing policy	IDC was established by Cabinet Decision No. 1607(MOG) of 6 October 1976
Timing/legislative priority	An early decision would be desirable in the interests of the morale of the Commonwealth Police and because many Departments and authorities are interested and have been consulted.
Announcement of decision, tabling, etc.	A suitable announcement of the Government's decisions on the recommendations might be appropriate.
Action required before announcement	
Cost	No immediate costs. Some long-term increase in Commonwealth Police costs likely and some cost savings to Departments and authorities possible.



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## THE ISSUES

1. The issues upon which Cabinet should decide are:-
  - (a) whether the recommendations of an interdepartmental committee report on the Commonwealth Police should be accepted. The major recommendation is that as a general principle, the Commonwealth Police should be responsible for the investigation of criminal offences in the Commonwealth sphere subject to certain exceptions and qualifications. Expansion of the Police investigative function, when combined with recommendations in other areas would, in the Committee's view, assist in the development of a first class Police Force.
  - (b) whether a minority recommendation of two members of the interdepartmental committee that significant criminal investigation work in the customs and narcotics areas be transferred to the Commonwealth Police should be accepted or rejected.

## BACKGROUND

2. Cabinet, in Decision No. 1607(MCG) of 6 October 1976 appointed an interdepartmental committee to report to me on the advantages respectively of:
  - (a) concentrating the investigation of crimes against the Commonwealth in a single Force.

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- (b) having that Force responsible for all investigatory functions except those such as in the customs and narcotics fields which would remain with the Department of Business and Consumer Affairs; and
  - (c) such other alternative proposals that the IDC might wish to put before the Government.
3. Cabinet agreed further that the IDC should
- (a) report also on possible means of implementing any various options.
  - (b) take account of certain guidelines set out in Decision No. 1607(MOG) of 6 October 1976.
4. The interdepartmental committee has reported to me. A copy of that report is at Attachment A.

CONSIDERATION OF THE ISSUES

5. The first issue is whether the recommendations of the interdepartmental committee report should be accepted. The committee has rejected the proposition that all criminal investigative work should be undertaken by the Commonwealth Police. It recommends that, as a general principle, the Commonwealth Police should be responsible for the investigation of criminal offences in the Commonwealth sphere subject to certain exceptions and limitations, set out in the report (paragraphs 14 to 21). It recommends certain additional measures of improvement and of implementation (paragraphs 27 to 45).

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3.

6. I believe that the Committee's recommendations are practicable proposals which will assist significantly the achievement of Cabinet's objective of a first class Commonwealth Police Force, experienced and competent in the investigation of crimes against the Commonwealth (see Decision No. 1607(MCG) of 6 October 1976).

7. The second issue is whether significant criminal investigative work in the customs and narcotics areas should be transferred to the Commonwealth Police. The Committee as a whole does not recommend this, but it is supported by the Attorney-General's Department and the Department of Administrative Services. This is the only issue on which members of the Committee have expressed disagreement. The arguments for both propositions are set out in paragraphs 20 to 22 of the report.

THE PUBLIC IMPACT OF THE RECOMMENDATIONS

8. The recommendations are designed to facilitate steady and smooth progress towards the objective of a first class Commonwealth Police Force.

9. A suitable announcement of the Government's decisions on the recommendations might be appropriate.

FINANCIAL CONSIDERATIONS

10. No immediate costs are involved. Some long term increase in Commonwealth Police costs are likely, and some savings to other Departments and authorities is possible.

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### EMPLOYMENT CONSIDERATIONS

11. While some additional workloads may be absorbed initially, it would be necessary to increase progressively the strength of the Commonwealth Police Force if the recommendations of the Committee are accepted. Establishments and ceiling adjustments to departments and authorities would also need to be considered.

### COMMONWEALTH/STATE RELATIONS

12. As recommended in the report, there will be a need to explain carefully to the States the new, revised role determined for the Commonwealth Police.

### CO-ORDINATION

13. The Committee consulted all departments and authorities with significant investigative requirements in preparing its report. Members of the Committee differed only on the matter of the transfer of customs and narcotics criminal investigative activities to the Police.

### LEGISLATION

14. The Committee's recommendations do not involve legislation.

### PUBLICITY

15. See paragraph 10 above.

### TIMING

16. An early decision would be desirable in the interests of the morale of the Commonwealth Police and because many Departments and authorities are interested and have been consulted.

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## CONFIDENTIAL

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5.

RECOMMENDATIONS

17. I recommend that Cabinet consider the recommendations of the interdepartmental committee report at Attachment A.

MALCOLM FRASER

9 December 1976

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ATTACHMENT A

REPORT

OF

INTERDEPARTMENTAL COMMITTEE

ON

THE COMMONWEALTH POLICE FORCE

DECEMBER 1976

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## INTRODUCTION

1. Cabinet, in Decision 1067 (MOG) of 6 October 1976 endorsed the objective of a first class Commonwealth Police Force, experienced and competent in the investigation of crimes against the Commonwealth.
2. Having regard to this objective Cabinet appointed an interdepartmental committee to report to the Prime Minister on the advantages respectively of:
  - a. concentrating the investigation of crimes against the Commonwealth in a single Force;
  - b. having that Force responsible for all Commonwealth investigatory functions except those such as in the customs and narcotics fields;
  - c. such other alternative proposals that the IDC might wish to put before the Government.
3. Cabinet also indicated that the Committee should:
  - a. report on possible means of implementing any various options; and
  - b. take account of certain guidelines as a possible means of achieving the objective.

Annex A sets out the membership of the Committee and the guidelines included in the Cabinet Decision.
4. This report examines two options with regard to investigative work:
  - a. concentration of the investigation of all crimes against the Commonwealth with the Commonwealth Police;

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- b. having a single Force responsible for criminal investigations with certain specific exceptions.

5. It also comments on other measures to improve the Commonwealth Police. When combined with either option for investigative work, these will assist in the attainment of Cabinet's objective of a first class Force.

### INVESTIGATIVE WORK

6. The Committee considered that expansion of investigative work in matters of criminal significance would offer the major means of achieving Cabinet's objective of a first class Commonwealth Police Force.

7. "Crime" for the purpose of the report was accepted as offences against Commonwealth laws that involve criminal activity of significance. Excluded from the category of "crimes" were regulatory offences, such as failure to fill in statistical or taxation forms, airport parking offences and the like, as well as those minor offences against social security and similar legislation that are, for sound policy reasons, best left to be dealt with by officers of the Department concerned. In the context of this report criminal investigations do not include investigations directed towards the examination of departmental procedures, although such investigations will, from time to time, detect criminal occurrences.

8. The Committee took note of various arguments in support of placing more investigations of criminal offences with the Commonwealth Police. These are as follows:

- a. the development of a larger and more expert and experienced investigative Force capable of bringing a wider range of skills to bear on investigations of all kinds;

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- b. expanded job opportunities and responsibilities that would enhance the career prospects of the Force and make it a more attractive area of employment for talented investigators;
- c. the creation of a focal point for enforcement effort in areas of common interest and of criminal intelligence systems;
- d. a more substantial role for the Commonwealth Police (relative to their State and Territory counterparts);
- e. the achievement of a consistent and more professional approach to criminal investigation throughout the Commonwealth area;
- f. as a principle, there is merit in having the Commonwealth Police, rather than unco-ordinated individual forces in various functional departments, investigate crime wherever it occurs. In particular, organised crime does not follow the functional divisions preferred by Government, and the same people may be involved in a variety of offences such as narcotics, counterfeiting of currency, conspiracy to avoid payment of tax, etc.

9. However, several reasons were advanced against the concentration of criminal investigations:

- a. in some cases, Ministers and Departments have a requirement to decide policy and direct operations, including the determination of priorities and the methods for investigative activities relating to offences against laws they administer, which may be difficult for them to meet if investigations are conducted by police;

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- b. the use of a single investigative force would run counter to the desirable integration of investigative work in departments and authorities which have substantial investigative roles within their ordinary functional responsibilities;
- c. relations between government bodies and business and professional areas could be adversely affected by the use of police, especially in the exploratory phase of investigations;
- d. the presence of police investigators in substitution for departmental officers may have significant and adverse industrial consequences in certain areas.

10. In considering investigative activities that might be transferred to the Commonwealth Police, the Committee had discussions with representatives of all Departments and Authorities that have significant investigative requirements.

Option (a): "Concentration of the investigation of all crimes against the Commonwealth with the Commonwealth Police"

11. In the course of these discussions it became clear that some Departments and Authorities were strongly opposed to transferring investigations (some of which would be regarded as covering criminal activities under almost any definition) to the Commonwealth Police, on the grounds that they considered existing arrangements were both efficient and effective. The main areas where such a transfer was seen as causing serious difficulties were:

- Department of Immigration and Ethnic Affairs, Special Reports Branch
- Department of Business and Consumer Affairs, Bureau of Customs including the Narcotics area
- the Australian Taxation Office
- the Defence Force
- the Department of Health
- Postal and Telecommunications Commissions

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3.

12. There were some differences of opinion amongst members of the Committee regarding the validity of some of the arguments put forward by these Departments and Authorities for not transferring their criminal investigative activities to the Commonwealth Police. Nevertheless, it was agreed that selectivity was necessary and option (a) was not supported, taken literally as meaning that all criminal investigative work (irrespective of the definition of criminal activity) should be undertaken by the Commonwealth Police. This selectivity is considered in the discussion on option (b) below.

Option (b): "Having a single force responsible for criminal investigations with specific exceptions"

13. The Committee considered that as a general principle Commonwealth Police should be responsible for the investigation of criminal offences in the Commonwealth sphere subject to certain exceptions which are specified in this section of the report. Guidelines to apply this principle in particular cases should be established by individual negotiations between the Department of Administrative Services and all Departments and authorities. Subject to these guidelines Departments and authorities would seek police assistance whenever there were grounds to suspect that an offence had been committed or was about to be committed.

14. Special Reports Branch, Department of Immigration and Ethnic Affairs. The Committee acknowledged that it was desirable that general investigations in the immigration area not be seen as a police function. However, the Committee noted that when this Branch was established in 1966 guidelines were agreed. The guidelines state, inter alia:

"When there is specific information that individuals may have committed offences, whether against Acts or Regulations administered by the Department of Immigration or other authorities, the facts will be referred to Commonwealth Police for necessary investigation and interrogations. Similarly, when individuals are known to be in the country illegally, their descriptions will continue to be passed to Police for listing in Police Gazette and for such searches and other enquiries as Police are able to undertake."

The Committee recommends adherence to these guidelines.

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16.

RECOMMENDATIONS

46. The Committee recommends:
- Investigative Work
- (a) as a general principle that the Commonwealth Police should be responsible for the investigation of criminal offences in the Commonwealth sphere subject to the exceptions and qualifications specified in paragraphs 14 to 21;
  - (b) guidelines following this principle should be established by individual negotiations between the Department of Administrative Services and all Departments and authorities. Subject to these guidelines Departments and authorities would seek police assistance whenever there are grounds to suspect that an offence had been committed or was about to be committed (paragraph 13);
  - (c) adherence to the 1966 guidelines setting out the demarcation of functions between the Commonwealth Police and the Special Reports Branch, Department of Immigration and Ethnic Affairs (paragraph 14);
  - (d) the acceptance of the division of investigative work between Service Police and Commonwealth Police as set out in paragraph 15; and the precise operation of this arrangement be subject to future negotiations and agreement between each Service and the Department of Administrative Services (paragraphs 15 and 44);
  - (e) while the present investigative arrangements in the Health area should continue, the scope for using Commonwealth Police more fully should be explored (paragraphs 17 and 44);
  - (f) while there is a need for continued use of investigative officers in the Postal and Telecommunications areas, the scope for greater Commonwealth Police involvement, either independently or in conjunction with Departmental investigators, should be explored (paragraphs 18 and 44);

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17.

- (g) the scope for increased Commonwealth Police involvement in some aspects of Bankruptcy and Trade Practices investigations should be explored (paragraphs 19 and 44);
- (h) there be no transfer of criminal investigative work from the Customs and Narcotics areas of the Department of Business and Consumer Affairs (paragraphs 20 and 21). The Departments of Administrative Services and the Attorney-General dissent from this view and recommend that criminal investigative work in these areas which is significant be transferred to the Commonwealth Police (paragraph 22);
- (i) subject to satisfactory arrangements, Commonwealth Police could be placed in the narcotics area of the Department of Business and Consumer Affairs to undertake investigative work (paragraph 23);
- (j) Commonwealth Police should undertake some of the investigative work currently referred by Commonwealth Departments and authorities to State and Territory Police (paragraph 24);
- (k) the Government should establish a guideline that the Commonwealth Police normally would be the agency charged with investigating criminal offences under new Commonwealth laws (paragraph 25);
- (l) the possibility of channelling further investigative work to the Commonwealth Police should be reconsidered in about two years when developments within the Force itself and any changes in other circumstances can be taken into account (paragraph 26);

Other WorkLaw Compliance

- (m) the Commonwealth Police should continue to develop their professional expertise in specialised fields of law compliance, e.g. VIP escort and airport police (paragraph 28);

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18.

## Guarding

- (n) Commonwealth Police should retain a guarding role, including the guarding of Defence and joint establishments, perhaps in a separate division, with appropriate standards of entry and training and with provision for transfer, etc., to other areas of the Force (paragraph 29);

## Debtor Location, Process Serving and Bailiff Duties

- (o) Commonwealth Police should be withdrawn from debtor location, process serving and bailiff duties as soon as alternative properly trained staff can be made available (paragraph 30);

## Criminal Intelligence

- (p) early study be given to the Hope Commission's recommendations in the area of intelligence co-ordination (paragraphs 31, 32 and 43);

## Common Police Services

- (q) before new common police services are approved or existing services further developed, specific proposals should be the subject of detailed study as to their advantages and costs. Subject to such a study, the Committee sees advantage in further developing the Australian Police College as a common police service to all Australian forces and selected overseas forces (paragraphs 33-35);

## Implementation

### Recruitment

- (r) selection criteria and entrance standards for the various areas of the Commonwealth Police should be reviewed (paragraph 37);

### (s) Training

the training of the Commonwealth Police should accord with the high standard envisaged for the Force (paragraph 38);

### Organisation

- (t) a review should be undertaken of the structure of the Force, in line with the increased role

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## CONFIDENTIAL

19.

recommended in this report including the possibility of statutory appointments for the senior officers of the Force (paragraphs 40-41);

Co-ordination

- (u) a mechanism for resolving operational problems and matters of general co-ordination not covered by the proposed guidelines needs to be developed. The mechanism should comprise an IDC as set out in paragraph 45(a);
- (v) for co-ordination with State Police Forces, existing machinery such as the Conference of Police Commissioners should be utilised as much as possible. Early opportunity should be taken to explain to the States the precise scope of the new, revised role determined for the Commonwealth Police (paragraph 45(b)).

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**CONFIDENTIAL**ANNEX AMEMBERSHIP OF INTERDEPARTMENTAL COMMITTEE

Department of the Prime Minister and Cabinet (Chair)  
Department of Administrative Services  
Department of Defence  
Department of Business and Consumer Affairs  
Attorney-General's Department  
Public Service Board

GUIDELINES

- (i) The investigation of criminal activities in the Commonwealth sphere be, subject to (ii) below, ordinarily a matter for the Commonwealth Police;
- (ii) Departments and authorities which at present perform investigative work relating to their ordinary functional responsibilities continue to do so, but they should utilise the services of and co-operate with the Commonwealth Police as much as possible;
- (iii) In the investigation of criminal activities in the Commonwealth sphere in matters wider than, or outside, the ordinary functional responsibilities of Departments or authorities having investigative facilities, the Commonwealth Police be involved;
- (iv) The Minister bring forward to Cabinet specific recommendations for improved training of the Commonwealth Police Force, e.g. the development of the Police College;
- (v) Commonwealth Police Special Branch functions be strengthened but within the framework of clear and agreed dividing lines between its functions and the functions of ASIO; the intelligence role of the Commonwealth Police or the tasking machinery established in pursuance of that role, to be reviewed

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**CONFIDENTIAL**ANNEX A (Cont)

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by Ministers in the light of the recommendations of the Hope Commission;

- (vi) Any discussions with State Police special branches regarding the intelligence role of the Commonwealth Police to take place following the clarification referred to in sub-paragraph (v) above and be framed to ensure that agreed procedures are developed in cases of concurrent or overlapping lines of enquiry in intelligence matters;
- (vii) discussions be continued regarding the provision by the Commonwealth Police of common police services similar for example to the FBI and the RCMP, e.g. the Forensic Science Bureau and the National Planning and Research Unit; and
- (viii) Assistance continue to be given to State and Territory Police Forces where requested.

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C A B I N E T   M I N U T E

Committee on Machinery of Government

Canberra, 6 October 1976

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Decision No. 1607 (MOG)

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Submission No. 666   -   Commonwealth Police Force  
and Attachment

The Committee endorsed the objective of a first class Commonwealth Police Force, experienced and competent in the investigation of crimes against the Commonwealth.

2.        The Committee agreed, having regard to the objective in paragraph 1 above, that an interdepartmental committee comprising the Departments of the Prime Minister and Cabinet (Chair), Administrative Services, Defence and Business and Consumer Affairs, the Attorney-General's Department and the Public Service Board (and co-opting such other Departments as necessary) should investigate and report to the Prime Minister on the advantages respectively of :-

- (a) concentrating the investigation of crimes against the Commonwealth in a single Force as proposed in the Submission;

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## CONFIDENTIAL

2.

Decision No. 1607 (MGO) (cont.)

- (b) having that Force responsible for all Commonwealth investigatory functions except those such as in the customs and narcotic fields which would remain with the Department of Business and Consumer Affairs; and
- (c) such other alternative proposals that the I.D.C. might wish to put before the Government.

3. The Committee agreed further that the I.D.C. should :-

- (a) report also on possible means of implementing any various options;
- (b) take account of the following guidelines as a possible means of facilitating achievement of the objective in paragraph 1 above :-
  - (i) the investigation of criminal activities in the Commonwealth sphere be, subject to (ii) below, ordinarily a matter for the Commonwealth Police;
  - (ii) Departments and authorities which at present perform investigative work relating to their ordinary functional responsibilities continue to do so, but they should utilise the services of and co-operate with the Commonwealth Police as much as possible;
  - (iii) in the investigation of criminal

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3.

Decision No. 1607 (MOB) (cont.)

activities in the Commonwealth sphere in matters wider than, or outside, the ordinary functional responsibilities of Departments or authorities having investigative facilities, the Commonwealth Police be involved;

- (iv) the Minister bring forward to Cabinet specific recommendations for improved training of the Commonwealth Police Force, e.g. the development of the Police College;
- (v) Commonwealth Police Special Branch functions be strengthened but within the framework of clear and agreed dividing lines between its functions and the functions of ASIO; the intelligence role of the Commonwealth Police or the tasking machinery established in pursuance of that role, to be reviewed by Ministers in the light of the recommendations of the Hope Commission;
- (vi) any discussions with State Police special branches regarding the intelligence role of the Commonwealth Police to take place following the clarification referred to in

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Decision No. 1607 (MOC) (cont.)

sub-paragraph (v) above and be framed to ensure that agreed procedures are developed in cases of concurrent or overlapping lines of enquiry in intelligence matters;

- (vii) discussions be continued regarding the provision by the Commonwealth Police of common police services similar for example to the FBI and the RCMP, e.g. the Forensic Science Bureau and the National Planning and Research Unit; and

- (viii) assistance continue to be given to State and Territory Police Forces where requested; and

- (c) submit its report within six weeks.

  
Acting Secretary to Cabinet.

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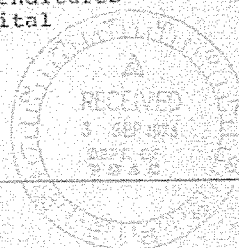
## FOR CABINET

 Submission No. 596  
 Copy No.

Title	COMMONWEALTH POLICE FORCE
Minister	R.G. Withers, Minister for Administrative Services
Main purpose	- To seek Cabinet endorsement in the light of the Report by Mr H.T. Bennett, of the functions to be discharged by the Commonwealth Police Force.
Relation to existing policy	Mr Bennett's report was commissioned by the Government in March.
Timing/legislative priority	An early decision is required on the Bennett Report. (See paragraph 11 of Submission No. 516, the Report of the Administrative Review Committee on the Department of Administrative Services.)
Announcement of decision, tabling, etc.	No publicity at this stage.
Action required before announcement	-
Cost	Additional expenditure in 1976/77 of the order of \$300,000 - \$400,000. Larger current expenditures in succeeding years, and significant capital expenditures.

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BACKGROUND


1. In March, Mr H.T. Bennett of the Attorney-General's Department was commissioned to conduct an "in house" enquiry on the future functions of the Commonwealth Police Force. A copy of his report is at ATTACHMENT A in which his conclusions 1-14 are at pages 1 and 2.

ISSUES FOR CONSIDERATION

2. The Commonwealth Police Force needs to be a first class force of real quality and status and high professional capability and repute. This need is underlined by contemporary experiences.
3. Realisation of this objective requires a stronger charter for real police work. The need for more demanding police work is of the essence. It is the sine qua non of any first class Force (see Mr Bennett's conclusion (3)). Given this, the standard of recruits and the length and quality of their training need to be lifted. And the Force must be placed to attract and hold first class personnel in a career service, and to secure full and effective cooperation of other forces, and related agencies, in Australia and overseas. The image of the Force must not be that of routine guard duties.
4. To this end Mr Bennett has, at the core of his findings, conclusion (5) that: "Departmental investigation services should be directed that as a general rule they should not undertake investigations into offences involving significant criminal elements" - these being kept for the Police as the proper specialist body (see paragraphs 33-35 of Report).

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5. Realisation of the objective also implies that functions under the new charter have clear and firm legislative backing. The present Police Act and Regulations need to be replaced by provisions conforming to the need of the proposed Force to be a separate statutory authority responsible to the Minister on a basis akin to that of State Police Forces (see ATTACHMENT B). 

6. Generally, I see acceptance of the findings of the Report as being essential for the achievement of the objective. I therefore endorse them subject to the following understandings:

- (a) Crime Intelligence - reference Conclusion (9) and paragraphs 61-67 of Report.

The degree and sophistication of organised crime, at national and international levels, require that the Commonwealth Police be able to act effectively in relation to offences against Commonwealth legislation and, where agreed, to assist State and Territory forces. This must involve the collection, collation and dissemination of intelligence on crime against Commonwealth legislation; on organised crime groups of interest to Australia; and on movement and activities of persons. Mr Bennett's recommendation in paragraph 65 that the function related to interstate movements be discontinued goes too far.

- (b) Relationship between roles of Police and Australian Security Intelligence Organisation (ASIO)  
(paragraph 69 and Appendix 4)

The respective roles of the Commonwealth Police



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and ASIO in relation to crime intelligence and security intelligence need to be considered when the Report of the Royal Commission on Intelligence and Security is available.

In relation to (a) and (b) I mention below a related proposal for a Special Intelligence Unit.

- (c) National Planning and Research Unit - reference Conclusion (10)

I am not proposing that such a Unit be established immediately as further study and consultations are required.

- (d) Forensic Science Research Bureau - reference Conclusion (11)

I propose to consult with the Attorney-General and State Ministers on an ad referendum basis on this matter.

- (e) Advanced Driver Training School - reference paragraphs 157-160

I consider that only one Commonwealth driving school should be established and that it should be under Commonwealth Police control.

7. In order that the Commonwealth's capability for intelligence gathering and related purposes be strengthened in the light of developments in domestic violence, I propose that there be a Special Unit of the Commonwealth Police Force working in close liaison with ASIO and Special Branches of State Police Forces.

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FINANCIAL CONSIDERATIONS

8. Additional expenditures will be required - perhaps \$300,000 - \$400,000 additional current expenditure this year. Larger current expenditures will be required in future years. There will also be significant capital expenditures, e.g. the training college.

EMPLOYMENT CONSIDERATIONS

9. Some 50 or 60 additional personnel will be required principally to provide for the Special Unit. There will also be some transfers of personnel from the public service, notably certain clerical, records and investigating staff in the Narcotics Bureau.

COMMONWEALTH/STATE RELATIONS

10. There is a need to achieve a greater measure of formal agreements - including on cost sharing - and action will be taken to this end.

COORDINATION

11. The Attorney-General supports my proposals. They have been forwarded to the Minister for Business and Consumer Affairs who I understand may be opposed to the transfer of Narcotics Bureau functions.

LEGISLATION

12. See paragraph 5 above.

RECOMMENDATIONS

13. I recommend that Cabinet:

- (a) direct that the conduct of Commonwealth investigations into offences involving significant criminal elements, including offences against the Crimes Act (and related Acts), offences involving fraud, and offences



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relating to smuggling and trafficking of drugs, be the responsibility of the Commonwealth Police Force;

- (b) endorse the functions proposed for the Commonwealth Police set out in APPENDIX 9 of ATTACHMENT A (the Bennett Report), as elaborated in the body of the Report with the following further understandings:
- (i) certain crime intelligence on interstate movements will be required;
  - (ii) the proposal for a National Planning and Research Unit will be the subject of further study and consultation;
  - (iii) the respective roles of the Commonwealth Police and ASIO should be considered in the light of the report of the Royal Commission on Intelligence and Security; and
  - (iv) the proposal for a Forensic Science Research Bureau will be discussed further with the Attorney-General and State Ministers;
- (c) agree that a Special Unit be established in the Commonwealth Police for intelligence gathering and related purposes;
- (d) agree that a single Commonwealth Advanced Driver Training School be established and controlled by the Commonwealth Police.

(R.G. WITHERS)

3 September 1976

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## ATTACHMENT A

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Terms of Reference	1
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- (1) Terms of Reference
- (2) Functions of the Commonwealth Police Force as Recommended in Report of Mr Kerry Mills
- (3) Extract from the First Annual Report of the Trade Practices Commission
- (4) Acquisition etc. of Intelligence in Relation to Terrorist Groups affecting Commonwealth interests
- (5) Tasks proposed by Commissioners of Police for Research and Planning Unit.

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- (6) Extract from the Final Report of the U.K. Royal Commission on the Police
- (7) Extract from "A History of Police in England and Wales 900-1966" by T.A. Critchley
- (8) Extract from Report of Committee of Enquiry into National Forensic Institute
- (9) Proposed Functions of the Commonwealth Police Force (as recommended in Report of H.T. Bennett, June 1976)

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TERMS OF REFERENCE

1. The terms of reference for the enquiry are set out in Appendix 1.

NATURE OF THE ENQUIRY CONDUCTED

2. You indicated that your wish was that the enquiry should be conducted on an informal basis drawing as appropriate on the views of members of the Commonwealth Police Force, officers of your Department, officers of other relevant Departments and of other persons appearing to be in a position to contribute to the enquiry.

3. I proceeded in that manner rather than by taking formal evidence from witnesses.

4. I acknowledge the co-operation and assistance provided by all interested persons, particularly the Chief Commissioner of the Commonwealth Police Force and those officers of the Force whose assistance was specifically sought.

CONCLUSIONS

5. The functions I recommend for the Commonwealth Police are set out in detail in Appendix 9 to this report. My main conclusions, shortly stated, are as follows:

- (1) There is a need for a Commonwealth Police Force.
- (2) The Commonwealth Police Force should have a two-fold role of enforcement of Commonwealth law and the provision, by agreement, of police services needed by other Police Forces in Australia and Overseas.
- (3) Some of the functions that need to be performed by the Commonwealth Police Force are of considerable importance and complexity, and it cannot be expected - as it has been in the past - that those functions will be performed satisfactorily unless members of the Force are, in addition to being properly trained, given appropriate opportunities to gain practical experience.
- (4) As the opportunities for gaining the necessary police experience in Commonwealth matters are limited, those opportunities should wherever possible be kept for the Commonwealth Police Force and not permitted to be spread amongst a number of quasi-police type bodies. This is also desirable in the interests of overall efficiency and proper utilisation of law enforcement resources.

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- (5) The prevention and detection of crime should be accepted as matters for a police force. Departmental Investigation Services should, in consequence, be directed that as a general rule they should not undertake investigations into offences involving significant criminal elements. In particular this direction should cover all investigations into offences -
- (a) against the Crimes Act (and related Acts),
  - (b) involving fraud, and
  - (c) relating to smuggling and trafficking in drugs.
- (6) The investigation work which the Commonwealth Police Force at present performs for the Registrar of Companies in the A.C.T. should for the time being be continued by the Commonwealth Police Force notwithstanding the territorial nature of the relevant companies legislation, but the responsibility for this work will need to be reviewed later.
- (7) Much of the work which the Commonwealth Police Force at present performs in providing guard services where national security is involved could be performed by persons with lesser qualifications than a police officer. But the Commonwealth Police Force should not be withdrawn from this work until satisfactory arrangements can be made for its performance by other persons. It would not be satisfactory to leave the responsibility for those arrangements to individual Departmental Heads. The work needs to be performed by a properly organized, trained and qualified body of uniformed officers with power to search and detain where necessary. It may be possible in the A.C.T. to make use progressively of the A.C.T. Guarding Service for this purpose. A standing committee representative of the Commonwealth Police Force, the Department of Administrative Services and A.S.I.O. should be set up to ensure that the Commonwealth Police Force is not involved to an unnecessary extent in this guard work.
- (8) National Police Services should be provided only in accordance with proper inter-governmental agreements, which provide, amongst other things, for the bearing of the cost of the service.
- (9) There is at present no such agreement for the following services:
- (a) The provision of a national criminal records and information service.

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- (b) The provision of an intelligence service relating to criminals who are moving from one State to another.
- (10) The proposal for the establishment of a National Planning and Research Unit is sound in principle, subject to the reaching of an inter-governmental agreement and to budgetary considerations in the present economic climate. There is a question, however, whether any such Unit should be located within the Commonwealth Police Force or within or attached to the Department of Administrative Services.
- (11) The proposal for a Forensic Science Institute needs to be reconsidered in the light of the Government's policies on federalism and having regard to budgetary considerations in the present economic climate. Strictly speaking the function is probably one for a separate statutory body rather than the Commonwealth Police Force, although the Commonwealth Police Force would no doubt have a close working relationship with any such body. A decision is needed as to which Minister is responsible for this project.
- (12) In collecting intelligence on organized crime the Commonwealth Police should make maximum use of any assistance State Police Forces may be able to offer and should endeavour to avoid interference with relevant law enforcement functions of the State Forces.
- (13) It is appropriate for the Commonwealth Police to be used at designated airports to assist in connection with airport and aircraft security and to provide a general public service in the public areas.
- (14) There is no significant role for the Commonwealth Police Force in the provision of coastguard type services.

#### ESTABLISHMENT OF THE COMMONWEALTH POLICE FORCE

6. The Commonwealth Police Force was established in 1960 pursuant to the Commonwealth Police Act 1957.
7. Prior to its establishment there had been two Commonwealth law enforcement bodies, a Peace Officer Guard and a Commonwealth Investigation Service. The Peace

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Officer Guard was a uniformed constabulary (approximately 690 members) established under the Peace Officers Act 1925 and with the primary function of protecting Commonwealth premises and property. The Commonwealth Investigation Service was a non-statutory plain clothes detective force charged with the general responsibility of investigating offences against Commonwealth law. Its officers, numbering 54, had been appointed under the Public Service Act.

8. There had been links between the Peace Officer Guard and the Commonwealth Investigation Service. First, the Director and Deputy Directors of the Commonwealth Investigation Service had been appointed Superintending Peace Officer and Deputy Superintending Peace Officers respectively. Secondly, officers of the Commonwealth Investigation Service had been appointed Special Peace Officers, thereby acquiring certain powers customarily conferred on police constables, e.g. the powers of search and arrest conferred by the Crimes Act.

9. The Commonwealth Police Act 1957 brought these two law enforcement bodies together. In explaining the reasons for the Bill for the Act, the Minister referred to:

"... the necessity of having within the Commonwealth a properly planned Commonwealth Police Force which, by its system of recruitment and training and the avenues of employment offered, will not only ensure the availability at all times of an adequate force of investigators to carry out the needs in this field of the Commonwealth, but will also attract the best available investigators. The divided authority under which the Peace Officer Guard and the officers of the Commonwealth Investigation Service are employed and the different field and methods of recruitment have in the past placed severe limitations upon the extent to which the two services can operate towards a common end."

10. In regard to the effect of the Bill on the members of the Peace Officer Guard, the Minister said:

"The Bill really does only two things. First, it gives them a new name. Second, it opens to them possibilities of promotion and transfer to the upper investigation and administrative ranks, and some permanence of employment which at present is, in effect, denied to them."

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THE POLICE FORCE THAT HAS EMERGED SINCE 1960

11. The 1957 Act has done little more than bring the two components of a guard force and investigation service under the one formal administrative control. The work and the personnel in both those components have increased but there is still little in common between them and there has not been effective integration into a single force which it had been hoped would have overcome the problems of different fields and methods of recruitment.

12. The main reason for this has been the lack of normal police work to occupy the middle ground between routine guard work and the relatively skilled work of investigating offences against Commonwealth law. Some additional functions have been acquired, for example, responsibility for Interpol, airport security, the Australian Police College and counter-terrorism, but the very specialist nature of those matters has meant that they have not assisted significantly to produce an integrated police force.

IS A COMMONWEALTH POLICE FORCE REALLY NECESSARY?

13. A consideration of the functions of the Commonwealth Police Force must begin with the question whether, and if so why, such a Police Force is needed at all. Why, it may be asked, is it not sufficient that there should be a local Police Force in each State and Territory.

14. A member of those Forces has the same powers of search and arrest as a Commonwealth Police Officer has, and there is nothing in law to prevent a member of a State or Territory Police Force from doing virtually all the things that a Commonwealth Police Officer may do. In practice, moreover, it is common for State and Territory police officers to perform such functions and in many circumstances it is desirable, if not necessary that they should continue to do so.

15. Nevertheless, the ultimate responsibility for enforcement of Commonwealth law and for protection of Commonwealth property and information rests with the Commonwealth Government, and that Government should plainly have at its disposal an appropriate law enforcement agency or agencies through which it can ensure that its responsibility is discharged. It would be quite unsatisfactory for the Commonwealth Government to be in a position in which it had to depend on the co-operation of a State Police Force for Commonwealth law enforcement functions.

16. Nor would it be satisfactory for the Commonwealth Government to be dependent on the Police Force of a Commonwealth Territory. Dependence on such a Force may be acceptable while that Force is under the control of a Commonwealth Minister, but with moves towards self-

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government in the Australian Capital Territory and the Northern Territory, it should be recognized now that those Police Forces will in due course cease to be under the control of a Commonwealth Minister.

#### THE NATURE OF THE COMMONWEALTH POLICE FORCE NEEDED

17. The Commonwealth Police Force should recognize, and avoid unnecessary duplication of, the roles of State and Territory Police Forces. It should confine its activities to matters which have a national significance.
18. The necessary national significance of an activity may derive from the fact that a law to be enforced is a Commonwealth one or that the Commonwealth is in some way the beneficiary of a service rendered.
19. The Force itself will be national in that its members will be located throughout Australia. Their statutory powers will also be exercisable throughout Australia - an advantage which does not attach to the powers of a State or Territory Police Officer.
20. Additionally, national significance may attach to the performance of functions for and at the request of State and Territory Police Forces. There is an increasing number of service type functions which are needed for the effective operation of State and Territory Police Forces and which for economy or other reasons should be performed centrally for all those Forces rather than separately for each. I see the provision of such national police services as an appropriate and important role for the Commonwealth Police Force. In saying this, however, I do not mean to imply that the Commonwealth should necessarily bear the financial burden of the national police services merely because they are provided by the Commonwealth Police.
21. Proposals for the Australia Police to provide a range of national police services to the State Police Forces were submitted to a Conference of Police Ministers held on 26 September 1975. The main service discussed on that occasion was the provision of computerised information relating to matters such as people of interest to the Police and wanted and stolen motor vehicles. The outcome of the discussion was a decision to establish a working party of Commonwealth and State officers to consider the matter and to report back to the Police Ministers. The future of this Working Party will now depend on the approach of the present Commonwealth Government to the provision of services to State Police Forces, on the availability for this purpose of adequate computer facilities and on budgetary considerations.
22. Subject, however, to those considerations, the functions of the Force will fall broadly into two categories, i.e., those involving national law enforcement

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and those involving the provision of national police services.

23. The law enforcement role of the Commonwealth Police Force will be much more restricted in scope than is the corresponding role of a State Police Force because under the Constitution the general criminal law is a State matter. Commonwealth laws requiring enforcement will relate to specific Commonwealth interests.

24. Once the need for a Commonwealth Police Force is accepted it must be recognized that its efficiency will depend partly on the training that its members receive and partly on the experience they obtain in relevant fields of police work. Both these aspects must be accepted as important to the development of a Force that will be adequate to meet the demands that will be made upon it.

25. The need for adequate training is obvious and needs no comment. But the need for opportunities to obtain experience is often overlooked. If that experience is to be ensured, proliferation of Commonwealth bodies with truly police type functions must be avoided. So far as practicable, such functions should be concentrated in the one law enforcement agency which will then be able to profit from its experience and develop into a Force with a higher level of efficiency than would otherwise be possible.

26. I make certain recommendations below to give effect to the views I have just stated. They are recommendations which I regard as being of basic importance particularly if, as stated in the terms of reference for this enquiry, amalgamation proposals such as were in mind for the Australia Police are not to be proceeded with. Without that amalgamation the Commonwealth law enforcement functions that are available to commit to the Commonwealth Police are limited. It is important that the maximum use be made of those functions to provide the Force with necessary experience.

#### THE EXISTING FUNCTIONS OF THE COMMONWEALTH POLICE FORCE

27. The Commonwealth Police Act does not state what the functions of the Force are to be. Its approach is to provide in Section 4 that the Force is to consist of the Commonwealth Police Officers and the special Commonwealth Police Officers appointed under the Act and then in Section 6 for those officers to have certain powers and duties. Their basic powers and duties are all related to those of a constable - under either Commonwealth or State law.

28. This approach to the problem of indicating the functions of the Commonwealth Police Force takes account of the fact that the office of constable is one that has

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developed largely under the common law - as indicated in the following passages from Halsbury's Laws of England:

"The history of the police is the history of the office of constable and, notwithstanding that present day police forces are the creation of statute and that the police have numerous statutory powers and duties, in essence a police force is neither more nor less than a number of individual constables, whose status derives from the common law, organized together in the interests of efficiency.

The primary function of the constable remains as in the seventeenth century, the preservation of the Queen's peace. From this general function stem a number of particular duties additional to those conferred by statute and including those mentioned hereafter.

The first duty of a constable is always to prevent the commission of a crime. If a constable reasonably apprehends that the action of any person may result in a breach of the peace it is his duty to prevent that action.

It is his general duty to protect life and property, and the general function of controlling traffic on the roads is derived from this duty.

Although it is the duty of the police to obtain all possible information regarding crimes and offences which have been committed, they have in general no power to compel any person to disclose facts within his knowledge or to answer questions put to him.

It is the duty of a constable to execute a warrant issued by a Justice of the Peace and directed to him."

29. The detailed functions of the Commonwealth Police Force have been considered twice in recent years. They were considered first by a Committee set up in 1970 by the then Attorney-General and again in 1973 by Mr Kerry Milte. The functions recommended by Mr Milte were supported by the Commissioner although they appear not to have been formally adopted. They are set out in Appendix 2 and it will now be convenient to discuss them seriatim.

Function No. 1 - Prevention of crimes against the Commonwealth and the preservation of the peace of the Commonwealth

30. As appears from the extract from Halsbury quoted above, the preservation of the peace and the

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prevention of crime are basic functions of a constable. However, the attempt to distinguish between Commonwealth and State roles by resort to the doubtful concepts of "crimes against the Commonwealth" and "the peace of the Commonwealth" is unsatisfactory. In my view, this function should be re-worded to read "Prevention of crime under Commonwealth law and in that connection the preservation of the peace."

Function No. 2 - Investigation of offences against Commonwealth laws, as authorised by Ministerial arrangements

31. In the form in which it is stated this function is not open to objection. The important question that arises, however, is what classes of investigations should the Ministerial arrangements authorize the Commonwealth Police to conduct. In particular, should the Commonwealth Police be authorized to conduct some investigations which at present are being conducted by Departmental Investigation Officers.

32. There will be good reasons for having some classes of investigations conducted by Departmental Investigation Officers instead of by the Commonwealth Police. For example, the use of police in minor pension offences may give rise to excessive alarm on the part of the pensioners concerned; somewhat similar considerations may apply in relation to enquiries into suspected minor breaches of consumer protection laws; and the specialized nature of tax investigations coupled with the statutory requirements for confidentiality in tax matters has led to the practice of using officers of the Taxation Department for such investigations.

33. In my view, however, there are equally good reasons for ensuring that investigations into suspected offences involving criminal elements of significance should as a general rule be handled by the Commonwealth Police rather than by Departmental Investigation Officers. The work involved in the conduct of such investigations calls for special skills and responsibilities of their own. It is important that objectionable investigating techniques are not used and that evidence is not procured in a manner that will render it inadmissible in legal proceedings. All necessary questions must be asked by the investigator and powers of search and arrest will sometimes need to be exercised. The training, experience, statutory powers and intelligence resources of a police officer should enable him to meet those requirements. That is his purpose - to deal with crime - and in the interests of sound administration he should be used for the purpose rather than a Departmental Investigation Officer.

34. It is also important that if an investigation is one that is appropriate to be handled by the Commonwealth Police, they should be involved at an early stage, not

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when Departmental Investigation Officers find that they are getting out of their depth. The first questioning of a suspect is much more likely than any subsequent questioning to be productive and should not therefore be conducted by a person who is not going to have the ultimate responsibility for the investigation. Not infrequently, however, the Commonwealth Police are being involved in investigations, only after the main suspects have been interviewed by Departmental officers. That this is happening has been confirmed by the Crown Solicitor.

35. The consequences of not using the Commonwealth Police to investigate criminal matters worthy of their attention will, moreover, be cumulative. As well as the risk that the particular investigation may not be properly handled will be the effect on the overall capacity of the Police to handle investigations. That capacity, as I have already indicated, will depend very much on the experience that members of the Commonwealth Police Force are able to gain. There is unquestionably a need for the Commonwealth Police Force to have the capacity to handle from time to time investigations of considerable importance and complexity. That capacity will not in any event be attained easily; there will be a risk that it will not be attained at all if the Government does not ensure that the Force is afforded adequate opportunity to gain the necessary experience.

36. The test I have suggested for deciding whether an investigation should be conducted by the Commonwealth Police is whether the suspected offence involves criminal elements of significance. In some cases this will be a matter of judgment to be exercised from time to time. But there are some classes of offences which, in my view, should always be regarded as having sufficient criminality to satisfy the test.

37. In the first place, there are all the offences against the Crimes Act. By definition offences against that Act constitute crime. Usually investigations with a view to prosecutions for such offences are conducted by the Commonwealth Police rather than by Departmental Investigation Officers. But this is not always so. In my view, Departmental Investigation Officers should not conduct investigations into offences against the Crimes Act and I recommend that a direction be given to that effect.

38. There are several other Acts which for present purposes can be readily grouped with the Crimes Act. They include:

- (a) The Crimes (Aircraft) Act 1963-1973,
- (b) The Crimes (Protection of Aircraft) Act 1973,
- (c) The Crimes (Hijacking of Aircraft) Act 1972-1973,

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## (d) The Crimes (Overseas) Act 1964-1973.

I recommend that Departmental Investigation Officers be not used for investigations into suspected offences against any of these Acts, except, in the case of the lastmentioned Act, where there is a need for them to be used because of the unavailability of a police officer.

39. Offences against the Customs Act also call for consideration, particularly those relating to smuggling or illegal trafficking in drugs. The present position is that most if not all investigations into drug offences are carried out by officers in the Narcotics Bureau of the Department of Business and Consumer Affairs. There appears to be no reason to doubt the efficiency of their work, which, however, is clearly of a criminal nature. On the basis of the general approach I have proposed, it would be preferable to have such investigations carried out by the Commonwealth Police - just as State drug detection work is carried out by the State Police Forces.

40. Apart from the criminal nature of this work, there are the following additional reasons for the adoption of that course:

- (a) the detection of drug smuggling offenses with its frequent need to rely on covert operations and contacts in the criminal world is work that does not live happily with the newly-acquired role in the business world of the Department of Business and Consumer Affairs;
- (b) the Commonwealth Police have the function of maintaining, on behalf of all the Australian Police Forces and the Narcotics Bureau, the national intelligence agency for the collation, analysis and dissemination of drug intelligence;
- (c) the Commonwealth Police are responsible for the National Central Bureau of Interpol, which already conducts some enquiries in drug matters on behalf of the Narcotics Bureau and could, I am informed by the Police, readily extend its activities in this direction without increasing its staff.

41. The main argument against a proposal that investigations of drug smuggling offences be carried out by the Commonwealth Police is that the relationship of such investigations is so connected with the customs administration that they should not be separated from that administration. In his report to the Attorney-General in 1974 Mr A.T. Carmody commented (Appendix G, page 4) that:

"The current U.S. experiment concerning narcotics is said to be breaking down because the new Drug Enforcement Administration is separate from Customs and comes under a different Department."

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42. The Commonwealth Police could, however, be used on drug smuggling investigations without the responsibility for drug enforcement being committed to a Department other than the Department of Business and Consumer Affairs. No amendment of the Administrative Arrangements Order would be necessary. The Department could retain its responsibility for the enforcement of all Customs legislation but could avail itself of the services of the Commonwealth Police to conduct investigations into suspected offences. There seems no reason why the Departmental and Police Officers should not work in close liaison in these matters as in fact happens in other classes of investigation.

43. Similar arrangements for the use of the Commonwealth Police should also, in my view, operate in relation to investigations into suspected customs offences involving fraud.

46. There is a question whether the Commonwealth Police should be made responsible for all the prevention and detection work for customs in Australia in such the same way as the RCMP is responsible for all such work in Canada. A proposal of that kind would involve amalgamation of virtually the whole of the customs law enforcement agency with the Commonwealth Police and give rise to a number of important questions, relating both to policy and working arrangements. The terms of reference for the present enquiry do not appear to envisage that the enquiry would extend to a consideration of such an amalgamation and I accordingly express no view on whether such a proposal would be desirable.

47. I have mentioned specifically fraud cases in the customs context. Whatever its context, fraud should, in my view, be regarded as crime and therefore a matter for police investigation as a general rule. In practice it seems usually to be so recognized - see for example, the views of the Trade Practices Commission in paragraph 1.22 of its First Annual Report (set out in Appendix 3). I recommend that the practice be made mandatory.

48. The proposals for the Australia Police envisaged that "corporate crime" would be a major responsibility of that Force. Whether such crime will now be a major responsibility of the Commonwealth Police will depend on whether and the extent to which the Commonwealth Parliament enacts national legislation with respect to companies and the securities industry.

49. Pending the enactment of such legislation any Commonwealth Police role in relation to corporate crime will derive mainly from the Companies Ordinance of the A.C.T. Under present arrangements, which have operated for some years, the Registrar of Companies for the A.C.T. uses the Commonwealth Police rather than the A.C.T. Police for his investigations, notwithstanding that they generally arise under a Territory Ordinance.

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50. Logically it could be contended that this work is territorial rather than national in character and that it should therefore be taken over by the A.C.T. Police Force. It must be borne in mind, however, that -

- (a) Many of the companies incorporated in the A.C.T. operate on an Australia-wide basis and much of the investigation work for that reason takes place outside the A.C.T. There are in these circumstances obvious advantages in using on these investigations the Commonwealth Police Force, which has officers located throughout Australia and with powers that are effective throughout Australia.
- (b) Proposals for national legislation with respect to the securities industry are currently under consideration.

51. Having regard to these considerations a transfer of this investigatory work from the Commonwealth Police to the A.C.T. Police seems undesirable at this point of time. However, as autonomy for the A.C.T. increases and the Companies Ordinance for the Territory becomes the responsibility of a local executive rather than a Commonwealth Minister, the matter will need to be reviewed.

52. It was also envisaged that the Australia Police would undertake considerable investigatory work in bankruptcy matters. This apparently overlooked that most aspects of bankruptcy are not criminal in character and that the examination of persons for bankruptcy purposes usually takes place before the Court or Registrar. In my view, there will be little bankruptcy investigatory work which will be appropriate for the Commonwealth Police.

Function No. 3 - Protection of the Prime Minister, the Governor-General and other persons as directed by the Attorney-General

53. This function is clearly appropriate, the only amendment required being the substitution of the Minister for the Attorney-General, having regard to the fact that the Attorney-General is no longer responsible for the administration of the Commonwealth Police Act. It is to be noted that the function includes the guarding of Government House and the Lodge.

Function No. 4 - Physical protection of the property of the Commonwealth where national security is involved

54. This was the main function of the Peace Officer Guard before that body was absorbed into the Commonwealth Police Force. The function continues to make heavy demands on the uniformed branch of the Force.

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55. The work is monotonous and can be performed by persons without the training of a constable. The Chief Commissioner is anxious to reduce significantly the number of Commonwealth Police Officers committed to this work by -

- (a) replacing, where possible, police officers by alternative classes of persons such as employees of private security services and members of the Defence Forces;
- (b) replacing static guards with electronic alarm systems coupled with mobile police patrols.

56. While this objective is understandable, there are difficulties in the way of its early attainment. Thus,

- (a) risks cannot be taken with matters affecting national security;
- (b) there is usually a need to control the access of a large number of persons to buildings housing the security information, and to provide this control security guards of one kind or another are usually indispensable;
- (c) Ad hoc arrangements by individual Departments would be likely to result in inefficiency and any satisfactory replacements for Commonwealth Police Officers would therefore need to be members of an organized and disciplined body employed on a general basis to protect security interests.
- (d) The rank structure of the armed services makes it less than satisfactory to commit to members of those services with low rank the task of policing the observance of security requirements of persons some of whom will be of high rank.

57. If the Peace Officer Guard had not been incorporated into the Commonwealth Police Force it is unlikely that there would now be any suggestions that this type of work was not appropriate for the Guard. The incorporation of the Peace Officer Guard into the Commonwealth Police Force seems therefore to have been a questionable step. But their incorporation has taken place and it would be a drastic step at this stage to separate them again. I do not myself see justification for such a step. The appropriate course seems rather that of employing the persons required for routine guard work in a separate Division or Branch of the Commonwealth Police for which lesser entrance qualifications and training are required. However, the precise arrangements for employing these persons within the Police Force go beyond the terms of reference of this enquiry.

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58. In the Australian Capital Territory, a guarding service is being developed by the Department of Administrative Services. Its function is to provide a night-watch-man service for Commonwealth buildings. It is concerned with the protection of the buildings rather than with classified information in the buildings. It is a uniformed service and its members receive training to fit them for their duties. At this stage they have no statutory recognition and no powers of detention or search, but the question of conferring such powers on them is under consideration. Entrance qualifications to this service are less than for the Commonwealth Police. If appropriate powers of detention and search were to be conferred on the members of this service, they could, in my view, be used in lieu of the Commonwealth Police Force to perform much of the routine guarding work that has to be performed in the A.C.T. There are, however, two observations that need to be made in this regard. One is that any substitution of the guarding service for the Commonwealth Police should be effected gradually as resignations and retirements from the Commonwealth Police make substitution convenient. The other is that it would be undesirable, in my view, to introduce entrance and other standards for the guarding service which were comparable with those for the Commonwealth Police. It should always be clear that the guarding service is a guarding service, not a police force.

59. There is a need to ensure that the number of Commonwealth Police Officers employed on guard duties does not exceed proper requirements having regard to all relevant considerations including the use that might be made of electronic and other equipment. This need is a continuing one. When the Commonwealth Police were attached to the Attorney-General's Department there was a Committee for this purpose known as the Committee on Protective Security (Guards). The Committee comprised representatives of the Attorney-General's Department, A.S.I.O. and the Commonwealth Police. It considered all applications to have Commonwealth Police Officers made available for such guard duties and all requests from the Commissioner of the Force to withdraw officers who had been made available. I understand that no such Committee exists at present. I recommend that such a Committee be established for the purposes just mentioned and also with a standing requirement that it examine periodically whether the need for each guard service has continued.

60. The Department of Administrative Services is now responsible for both the Commonwealth Police and for Commonwealth Government office accommodation. This provides the Department with some opportunity to avoid unnecessary proliferation of premises which need for security considerations to have police guards. I recommend that in allocating premises to Departments the Department of Administrative Services endeavour so far as practicable to avoid such proliferation.

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Function No. 5 - Acquisition, collation, evaluation and dissemination of criminal intelligence in relation to:

- (a) persons engaged or suspected of being engaged in illicit drug activities affecting Australia;
- (b) the movement of criminals to and from Australia, or between the States and Territories;
- (c) organised crime;
- (d) terrorist groups, affecting Commonwealth interests.

61. Any police force needs to acquire, collate and evaluate intelligence on matters that relate to its law enforcement functions. The intelligence activities do not to that extent constitute a function of the force, but are merely steps taken to enable the force to perform its functions.

62. In the case of the Commonwealth Police Force some intelligence activities may be justified on that basis. But it may also be appropriate for the Force to engage in other intelligence activities to assist the Government or a Government instrumentality, Commonwealth or State, and in that event the activities will by themselves constitute a function of the Force.

63. The distinction between the two kinds of intelligence activities needs to be kept in mind. For the former kind the test of justification will be whether the intelligence that is being acquired, etc. has some reasonable likelihood of assisting the Force to perform its law enforcement functions. For the latter kind, justification should, in my view, depend primarily on the fact that the Government or the instrumentality has indicated that it would like the Commonwealth Police to acquire the intelligence for it. It will be recalled that earlier in this report, when referring to the scope that exists for the Commonwealth Police Force to provide national police services, I indicated that I had in mind functions that would be performed not only for, but at the request of, State and Territory Police Forces.

64. The intelligence activities of the Commonwealth Police relating to "persons engaged or suspected of being engaged in illicit drug activities affecting Australia" fall at present into the second of the two classes I have described. There is a Commonwealth/State agreement that the Commonwealth Police Force will conduct the national central intelligence agency for the collation, analysis and dissemination of drug intelligence. Of course, if my recommendation that the Commonwealth Police take over the investigation work of the Narcotics Bureau is implemented these intelligence activities will also be justified on the basis that they fall in the first of the two classes mentioned.

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65. The next intelligence activities for consideration are those relating to the movement of criminals to and from Australia, or between the States and Territories. The Commonwealth Police have law-enforcement functions in relation to criminals moving to and from Australia, e.g. under immigration laws, and it is therefore appropriate that the Commonwealth Police engage in intelligence activities in relation to such criminals. However, a similar justification does not, in my view, exist for acquiring intelligence concerning criminals who move merely between the States and Territories. The fact that they so move does not by itself attract any Commonwealth law enforcement responsibility - although such a responsibility may, of course, derive from other considerations such as the nature of the activities that the criminals are engaging in. There is at present no arrangement between the Commonwealth and the States for the Commonwealth Police Force to acquire and maintain intelligence concerning criminals moving from one State to another, although such an arrangement could result from recommendations of the Working Party that is currently enquiring into National Police Services. Subject to the early reaching of such an arrangement I recommend that the function be discontinued.

66. Organized crime is a continuing criminal conspiracy which operates for a profit motive and is ready to exploit the weapons of fear and corruption. It tends to be particularly involved in prostitution, drugs and gambling. The criminal activities involved are, for the most part, offences against State or Territory laws and therefore the responsibility of the State and Territory Police Forces. But some of the activities constitute offences against Commonwealth law, e.g. the importation of drugs, and prohibited immigration activities. Having regard to this possibility, the Commonwealth Police have adopted the function of acquiring, collating and evaluating intelligence on organized crime in Australia. They have done this to assist them in their own law enforcement functions, not at the request of the State Police Forces.

67. There is plainly some justification for the Commonwealth Police Force doing this. But the intrusion of that Force into areas which State Police Forces regard as their responsibility, e.g. massage parlours, has given rise to strong criticism from the State Police Ministers and their Commissioners. The matter was ventilated with some feeling at the Conference of Australian Government and State Government Ministers which was held at Canberra on 26 September 1975. The discussion at that Conference points to the desirability of the Commonwealth Police refraining from direct action such as interviewing prostitutes in massage parlours where such action could involve interference with the responsibilities of a State or Territory Police Force.

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68. It is important that there should be good working relationships between the Commonwealth and the State and Territory Police Forces. The transcript of the 1975 Police Ministers' Conference shows that in this area the present working relationships between the Forces leave a good deal to be desired, although I do not wish to imply that this is the fault of the Commonwealth Police alone. If relationships are to be improved the Commonwealth Police Force will for its part need to show more respect for the responsibilities of the other Forces and, I suggest, endeavour to get some of its intelligence on organized crime for the Force with immediate responsibility for the relevant law enforcement function.

69. The remaining intelligence function that calls for consideration relates to terrorist groups, affecting Commonwealth interests. In my view, this is an appropriate function for the Commonwealth Police. For security reasons my comments on the function are set out in an appropriately classified Appendix 4.

Function No. 6 - Provide a national criminal records and information service

70. This function overlaps the criminal intelligence function. However, function No. 6 is concerned with information of a factual nature whereas the intelligence information includes deductions and inferences from established facts. Intelligence usually needs, moreover, to be kept confidential; criminal records and information are subject to less stringent requirements in this regard.

71. It is appropriate for the Commonwealth Police Force, as indeed it is for any Police Force, to keep criminal records and information to the extent that they have some reasonable connection with its law enforcement functions. But there has as yet been no arrangement with the States for the Commonwealth Police Force to provide a national service of this kind. To some extent the matter will be considered by the Working Party on Police Services which the 1975 Police Ministers' Conference decided to set up. In the absence of a Commonwealth-State arrangement (which would take account of cost considerations) there is, in my view, no justification for the provision of such a service. I accordingly recommend that subject to any agreement that might at an early date be reached as a result of a recommendation of the Working Group on National Police Services, the function be amended to read "Maintenance of criminal records and information on matters relevant to the law enforcement functions of the Force".

Function No. 7 - Maintain services to provide:

- (a) scientific assistance to other Australian Police Forces;
- (b) planning and research facilities for the benefit of all Australian Police Forces;

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- (c) up-to-date national crime statistics and trend analyses;
- (d) research into methods of crime prevention;
- (e) training for State, Commonwealth and law enforcement officers from overseas.

72. Consistently with views I have already expressed, I think services of the kind mentioned here should not be maintained by the Commonwealth Police Force merely because it appears to that Force that they will be useful to the State Police Forces. If services are to be provided for other Forces, it should be because the other Forces have indicated that they wish the Commonwealth Police Force to provide the services and an appropriate Commonwealth-State agreement in regard to the matter has been made. The agreement should deal, *inter alia*, with the question of whether, and if so how, the cost of the service is to be apportioned.

73. It will be convenient to deal first with paragraph (b) of this function. For some years the Conference of Police Commissioners has been proposing the establishment of a National Police Research and Planning Unit. The functions of the Unit would be to:-

- (a) carry out research into police procedures and practices common to all Forces with a view to furnishing recommendations aimed at increasing police efficiency;
- (b) submit plans for the development of Police Forces to meet future demands;
- (c) develop new techniques and equipment in order to maintain police efficiency in a changing society;
- (d) provide edited data to research bodies such as the Institute of Criminology; and
- (e) disseminate information for the benefit of all Police Forces by the publication of a "Police Research Bulletin".

74. A list of specific tasks that such a Unit might undertake was formulated by the Conference of Commissioners and is attached as Appendix 5 to this report.

75. It has been envisaged by the Conference of Commissioners that the Unit would be attached to the Commonwealth (Australia) Police. The proposal for the establishment of such a Unit has been endorsed successively by Attorneys-General Hughes, Greenwood and Murphy.

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76. Early thinking of the Commissioners was that the cost of the Unit would be borne by the Commonwealth and the States on the same basis as applies in relation to the Central Fingerprint Bureau. In 1973, however, the Commissioners recommended that the Commonwealth bear the whole cost and the then Attorney-General of the Commonwealth accepted that recommendation.

77. The need for a body which is charged specifically with responsibility for reviewing police methods and procedures with a view to rendering them more efficient by, inter alia, taking advantage of developments in science and technology, has been recognised in other countries.

78. In the United Kingdom the Royal Commission which enquired from 1960-1962 into various aspects of the police concluded that planning had suffered through not being the clear responsibility of any single component of the service. The Royal Commission accordingly recommended the establishment of a central police research and planning unit, which, aided by scientists, would have a duty to plan police methods, develop new equipment and study new techniques. The relevant proposals of the report of the Royal Commission are set out in Appendix 6. Such a unit was set up in the Home Office in 1963. The nature of its activities is indicated in "A History of Police in England and Wales 900-1966" by T.A. Critchley at pages 312-315. A copy of those pages is attached as Appendix 7. Further information concerning the activities is to be found in:

- . Ten Years of Police Research, by A.P.C. Clissitt (Police Research Bulletin No. 22, 1973),
- . The Pattern of Research and Development: A Process of Consultation,
- . Research Review 1971 (Police Research Bulletin No. 17, Summer 1971).

79. As appears from those articles the original Research and Planning Branch has now developed into two Branches, namely, the Police Research Services Branch and the Police Scientific Development Branch. This has apparently been found convenient in the U.K. because of the emphasis on the need for police in some projects and for scientists in other projects. Whether a similar separation would be provided for in an Australian context would be a matter for consideration.

80. Japan has a National Research Institute of Police Science and the United States of America has its Law Enforcement Assistance Administration.

81. In my view, the proposal for a National Police Research and Planning Unit for Australia is a desirable one in principle. It is, moreover, a proposal for a national police service which the State Police Forces are anxious that the Commonwealth Police Force should conduct in accordance with arrangements that would enable participation by all Police Forces in Australia. This suggests that the

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Unit could assist materially in promoting good relations between the Commonwealth Police Force and the State and Territorial Police Forces.

82. There is a question as to whether such a Unit if established, should be created within the Commonwealth Police Force or within or attached to the Department of Administrative Services. In the United Kingdom the comparable unit is in the Home Office and a similar approach in Australia may be desirable having regard to the fact that some of the matters calling for consideration will be more the responsibility of Governments than of the Police Forces. I make no recommendation on this aspect of the matter. Wherever the Unit was located the Commonwealth Police would plainly be closely associated with its activities.

83. The question of how the cost of such a Unit would be borne is, of course, a basic matter that would call for consideration particularly having regard to the Government's present objective of reducing expenditures. This is, of course, outside my terms of reference and I make no recommendation on it.

84. Nor do I make recommendations on any of the many matters of detail that will arise such as the size and composition of the staff of the Unit.

85. As, however, I have referred to the list of specific tasks that the Police Commissioners have formulated as being appropriate for a national research and planning unit (Appendix 5) I add that I would not wish to be taken as necessarily agreeing with all of the matters included in that list. Some of those matters may be more appropriate for consideration by the Ministers and Departments responsible for the Police Forces. The appropriateness of those matters being considered by the research and planning unit would depend on whether the unit was located within the Commonwealth Police Force, or as in the case of its United Kingdom counterpart, in the Department of Administrative Services.

86. It will be convenient to mention here the proposals that were under consideration by the former Government for the establishment of a Forensic Science Research Institute.

87. The former Attorney-General appointed a Committee to investigate the need for a national forensic institute. The State Governments were not consulted about the establishment of the Committee and they were not represented on it. The Committee reported in April 1974 and recommended the establishment of an "Australian Forensic Science Research Institute". The Committee's findings and recommendations are attached as Appendix 6 to this report. The primary function of the proposed institute was to be the conduct of research in the forensic sciences with

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emphasis on the natural sciences, technology and non-sociological aspects of forensic medicine. The Institute was to be a statutory authority responsible to the Attorney-General.

88. This proposal was submitted for consideration to the 1975 Conference of Police Ministers but the discussion there was limited. The State Ministers agreed in the first instance to consider the report of the Committee, which they had not at that stage read.

89. It is now a matter for the present Government to consider whether and to what extent it will proceed with the establishment of an Institute of the kind proposed by the Committee. In this connection consideration will need to be given to the budgetary considerations involved including the question whether the States should be asked to contribute to the cost and participate in the control of the Institute. The ministerial responsibility for the project also needs to be clarified, for example, whether it should rest with the Minister for Administrative Services in view of his responsibility for the Commonwealth Police or the Attorney-General having regard to his responsibility for the Institute of Criminology. The Minister for Science is perhaps another possibility.

90. Another matter that will call for consideration is the relationship between the forensic science research functions and the functions proposed for the National Police Research and Planning Unit, although I should not be taken to be suggesting that these two groups of functions should necessarily be handled by one body. It may be that the conclusion will be warranted that the classes of persons who are appropriate for one function have no real qualifications for or interest in the other class of function.

91. These matters plainly cannot be resolved in this report. For present purposes, however, I point out that the Forensic Science Institute that was proposed by the Committee was to be a statutory authority. The functions of such a body cannot be regarded as the functions of the Commonwealth Police Force - although doubtless there would be close liaison between the two bodies.

92. Certain limited research of a forensic science nature is being conducted by the Commonwealth Police, e.g. research in conjunction with the A.N.U. into what is known as the voiceprint technique. Pending the establishment of a forensic science institute, it is desirable that ad hoc projects like this be undertaken from time to time.

93. Paragraph (a) of function No. 7 relates to scientific assistance to other Australian Police Forces. At this stage the only activities of the Commonwealth Police Force which come within this paragraph are:-

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- the neutron activation analysis work conducted in conjunction with the Australian Atomic Energy Commission at Lucas Heights, and
- the document-examination work conducted by a small unit located at the Police College at Manly.

Both these functions provide considerable assistance to the State Police Forces in their investigatory work and in my view it is desirable that they should be continued, subject to arrangements of the kind already mentioned in relation to other national police services.

94. Paragraph (d) of function No. 7 is research into methods of crime prevention. This activity is covered by what has been said above in relation to the proposed National Research and Planning Unit and further comment is unnecessary.

95. In regard to paragraph (c) of function No. 7, the Commonwealth Police Force performs an axis role for all the Police Forces in Australia in the keeping of uniform crime statistics. This work is, and has been recognized by the Standing Committee of Attorneys-General to be of importance for the purposes of criminology research. It is an appropriate function for the Commonwealth Police Force to perform and I recommend that it continue to perform it.

96. The only trend analyses that are presently made relate to narcotics but little manpower is involved and such trend analyses that may be found to be desirable can be regarded as ancillary to the work of keeping uniform crime statistics.

97. Paragraph (e) of function No. 7 is training for State, Commonwealth and law enforcement officers from overseas. The institution at which most of this training is provided is the Australian Police College at Manly. The College provides general training for the Commonwealth Police Force and also specialist, officer and executive officer training for other forces in Australia and overseas.

98. The Commonwealth Police Force fulfils the management and support function in respect of the College which, in respect of national courses, is subject to immediate direction by a Board of Control comprised of Commonwealth and State representatives.

99. In my view, the function of the Commonwealth Police Force in relation to the College is appropriate and I recommend that it continue. I draw attention to the need that will arise soon for a decision in regard to the re-location of the College.

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100. In the light of the observations I have made on function No. 7 I recommend that the function be amended to read -

"7. Maintain services to provide, in accordance with agreements the Commonwealth Government has made with State Governments or Governments of overseas countries -

- (a) planning and research facilities for the benefit of all Australian Police Forces;
- (b) scientific assistance to other Police Forces;
- (c) up-to-date national crime statistics and trend analyses; and
- (d) training for State, Commonwealth and overseas law enforcement officers."

Function No. 8 - Physical protection of Australian Diplomatic Missions or Consular premises overseas, when authorized

101. This function can be discharged satisfactorily by the Commonwealth Police. However, the Chief Commissioner has proposed that most of the officers employed on this work be withdrawn on the ground that the work mainly consists of merely sedentary guarding of classified information. If they are to be withdrawn, suitable replacement guards will need to be employed in their stead - see my observations in regard to function No. 4.

Function No. 9 - Physical protection of designated foreign Diplomatic Missions or Consular premises within Australia

102. The Commonwealth Government has an obligation under the Vienna Convention on Diplomatic Relations to provide protection to foreign diplomatic premises in Australia. Paragraph 2 of Article 22 of that Convention provides:-

" The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity."

103. It is appropriate, in my view, that the Commonwealth Police Force should be used to provide this protection.

104. The nature of the protection that will be appropriate will be a matter for consideration from time to time and will presumably take account of any current tensions between Australia and the States whose diplomatic premises are under consideration.

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105. In the course of my enquiries it was put to me by the Commonwealth Police that manpower savings might be achievable in this area without loss of protection by replacing the existing static guard system by a system of concentrated mobile patrols following what is known as "the Aberdeen System". The proposal would seem to merit consideration, in which, of course, the Department of Foreign Affairs would need to participate.

Function No. 10 - Maintain the Australian National Central Bureau of Interpol

106. The International Criminal Police Organization (Interpol) is an organization on which the Police Forces of 125 member countries are represented. Its headquarters are in Paris and its aims are:-

- (1) to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and the spirit of the universal declaration of human rights,
- (2) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

107. Control of Interpol rests ultimately with its General Assembly, which meets once a year. The execution of decisions of the General Assembly is supervised by an Executive Committee. There is also a General Secretariat under a Secretary-General.

108. Each member country has a national central bureau, which handles the Interpol business of that country. That business consists mainly of a constant flow of information between members of Interpol and the Headquarters in Paris.

109. Australia first became a member of Interpol in 1949. From 1949 until 1974 the Chief Commissioner of the Victorian Police Force was the Australian representative. However, since 1 January 1975 the Chief Commissioner of the Commonwealth Police Force has, by arrangement between the Commonwealth and States, held this appointment and the Commonwealth Police has conducted the national central bureau for Australia.

110. In my view, this is an appropriate function for the Commonwealth Police Force and I recommend that it continue.

Function No. 11 - Establish and maintain liaison with overseas law enforcement agencies, by stationing officers at authorized posts

111. Interpol already provides a measure of liaison with overseas law enforcement agencies. The Chief

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Commissioner of the Commonwealth Police has advanced proposals to supplement that liaison by posting members of the Force to certain overseas posts. Paris, London, Hong Kong and Singapore have been mentioned in this connection.

112. I do not see the provision of liaison by such overseas postings as a function of the Commonwealth Police Force. Any overseas postings should be made, if at all, because they are considered to be necessary to enable the Force to perform functions that do belong to it. It is outside the terms of reference of this enquiry to consider whether overseas postings are necessary for that purpose.

Function No. 12 - Provide police services at airports

113. For some years plain clothes officers of the Commonwealth Police have assisted in preventing the escape and influx of criminals by air. It is appropriate that this work be performed and that it be performed by the Commonwealth Police Force.

114. Since 1975 uniformed members of the Commonwealth Police Force have been stationed at major airports. They are currently stationed at Sydney, Melbourne, Brisbane, Perth, Darwin, Adelaide, Hobart, Canberra, Cairns and Townsville.

115. The following two questions arise:

- (a) Is it necessary to have police at these airports? and,
- (b) If police are needed, should they be provided from the Commonwealth Police Force instead of from the relevant State or Territory Police Force?

116. In my view, each of these questions should be answered in the affirmative. I shall indicate the considerations that appear to be relevant.

117. Police are needed at airports for two basic purposes, namely airport security and to provide a general police service.

118. Airport security has assumed increasing importance in recent years with hijacking and terrorist incidents - although Australia itself has so far been free of such incidents. The International Civil Aviation Organization, of which Australia is a member, has shown its concern for the need of appropriate security by adopting Annex 17 to the Convention on International Civil Aviation, which sets out international standards and recommended practices for safeguarding international civil aviation against acts of unlawful interference. Annex 17 became applicable on 27 February 1975.

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119. The introductory note to Annex 17 reads as follows:

"The security of international civil aviation requires that each State prepare plans and procedures and make appropriate arrangements which together provide a minimum level of security for normal operation conditions and which are capable of rapid expansion to meet any increased security threats."

120. The Annex sets out a number of recommendations, coupled, however, with a statement that these are for application by each Contracting State in proportion to the prevailing threat of acts of unlawful interference against international civil aviation to which each of its aerodromes or its services is exposed.

121. For present purposes it is to be noted that Annex 17 specifically provides for -

- (a) the establishment for each aerodrome of a security programme adequate to meet the needs of international civil aviation (para. 5.1.1)
- (b) supporting security facilities, including law enforcement assistance, to be provided (para. 5.1.3)
- (c) precautions to be taken to prevent unauthorized access to unattended aircraft (para. 5.1.6)
- (d) adequate supervision to be provided over movement of persons between terminals buildings and aircraft (para. 5.1.7)
- (e) measures to be adopted to protect cargo, baggage, mail and stores (para. 5.1.9)
- (f) persons and vehicles to be prevented from unauthorized access to -
  - (i) the air side of an aerodrome;
  - (ii) other areas important to the security of the aerodrome (para. 5.2.4).
- (g) duly authorized officers to be readily available to assist in dealing with suspected, or actual cases of unlawful interference with international civil aviation (para. 9.1)
- (h) measures to be taken to prohibit the introduction on board an aircraft of unauthorized weapons (para. 9.2)

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122. Current practice in Australia is for -
- (a) security measures at airports to be subject to review by the National Co-ordinating Committee on Airport Security, which is representative of the different interests in civil aviation,
  - (b) an armed police officer to be present at all predepartures searching (by other persons) of passengers and their carry-on baggage,
  - (c) an armed police officer to be present in the Customs Hall of international airports so that he may take prompt action should a person attempt to remove a firearm, etc. from baggage which has been stowed in the hold of an aircraft and has therefore not been subject to search procedures,
  - (d) armed police officers to be responsible for preventing unauthorized entry to aircraft or aircraft movement areas.
123. These measures are in accordance with Annex 17 and they are generally in line with security measures at airports in other countries.
124. In addition to these security functions there is a need at airports for a general police service. Airports tend to be busy places with floating populations comprising some groups that would have a tendency to create disturbances in the absence of a police presence.
125. From the foregoing considerations I conclude that there is a need for police to have a permanent presence at major airports. The number of officers used for this purpose is of course a matter for detailed consideration from time to time.
126. In that consideration regard will need to be had to the use that can appropriately be made of other persons such as traffic officers of the Department of Transport. Such persons will be able to be used in a number of ways to reduce the number of police officers required, and this is desirable from many points of view. It is desirable that the number of police should not exceed the number required for necessary law enforcement functions.
127. The detailed arrangements for the use of Commonwealth Police at airports have just been the subject of a joint review by the Department of Transport and the Commonwealth Police. I draw attention to the fact that the report made in consequence of that review recommends a reduction of 89 to the existing establishment of Commonwealth Police for airport duty. I am in general agreement with the basic approach taken in the report.

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128. I turn now to the question whether the police functions at airports should be performed by the Commonwealth Police rather than by State or Territory Police.

129. In favour of the present arrangements under which the Commonwealth Police are used there are the following considerations:

- (a) the Commonwealth Government has responsibility for most of what goes on at an airport - including responsibility for security, immigration, customs and health requirements.
- (b) The Commonwealth Government has responsibility in relation to the Convention on International Civil Aviation.
- (c) Use of a single force such as the Commonwealth Police throughout Australia has advantages for liaison purposes with the Department of Transport and assists in keeping uniformity of practice, which itself has advantages.

130. It should be added that arrangements do exist for the Commonwealth Police to call in the relevant State or Territory Police Force to deal with an emergency situation that might arise and necessitate the use of their squads of riot police. It seems desirable that those arrangements be continued.

131. Reference should also be made to the Commonwealth Places (Application of Laws) Act 1970-1973. This Act was enacted following a decision of the High Court to the effect that at Commonwealth places like airports only Commonwealth law can operate. State law cannot apply as such in these places. To overcome the effects of that decision the Act deems ordinary State laws to be applicable in Commonwealth places, albeit as Commonwealth law. The practical significance of this is really not great because the Act provides for the Commonwealth to enter into agreements with the relevant States for enforcing their laws that have been so applied in Commonwealth places. State Police can therefore as a matter of law be used at airports if this is desired as a matter of policy. But the Act is significant for present purposes to the extent that it does ensure that through the Crimes Act the Commonwealth Police have necessary law enforcement powers to police at airports what would normally be provisions of State law.

132. This role of the Commonwealth Police enforcing State law as applied by the Commonwealth Places (Application of Laws) Act does not preclude the relevant State Police Force from performing a similar role itself if it thinks this desirable. But in practice the State Police Forces now seem to be content for the most part to leave the general police responsibility at airports to the Commonwealth Police Force and there is plainly much to be

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said for their avoiding unnecessary duplication of the Commonwealth Police Force's role. Close liaison between the force is of course very necessary.

133. Some of the airports which are serviced by the Commonwealth Police (Hobart, Adelaide and Canberra) are not used in connection with international flights. However, security checks of passengers and their carry-on luggage are made at those airports in respect of some departures, and it is desirable that those should be conducted under the supervision of a member of a police force who can also assist in preventing unauthorized entry to aircraft or aircraft movement areas. The Commonwealth Police at present perform this police service, and in the interests of uniformity it seems sensible that they should continue to do so.

134. My conclusion is that function No. 12 is appropriate but in order to indicate the nature of the function more clearly I recommend that it be amended to read -

Provide the following police airport services:

- (a) Assist in preventing the escape and influx of criminals by international aviation.
- (b) At airports designated by the Minister, provide in liaison with the Department of Transport assistance in connection with airport and aircraft security and a general police service in public areas.

Function No. 13 - Co-operate with the Department of Civil Aviation and State Police forces to provide an effective safety programme for aircraft

135. This function is subsumed by function No. 12 and further comment is unnecessary.

Function No. 14 - Provide police guards at Immigration Detention Centres

136. The Commonwealth Police Force provides the guarding function at two Immigration Detention Centres. The persons guarded are detainees under the Migration Act, whether deportees or prohibited immigrants. The function is similar to that of a jail warder although detainees are not treated as criminals. The function is an appropriate one for the Commonwealth Police to perform.

Function No. 15 - Safety testing of imported firearms

137. The Commonwealth Police Force performs this function for the customs arm of the Department of Business and Consumer Affairs. It is a service which the Commonwealth Police Force is appropriately qualified to provide and continuation of the service is desirable.

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Function No. 16 - Police duties in external territories,  
on request

138. It has been the practice to second members of the Commonwealth Police Force to the Police Forces of Norfolk and Christmas Islands. This practice strengthens the local Police Forces in those Territories and its continuation seems desirable. The Commonwealth Police Force is the appropriate Force to provide such assistance.

Function No. 17 - Police duties in overseas countries on  
the request of their Governments or the United Nations

139. It is appropriate that the Commonwealth Police Force should be available to perform this function as circumstances may require. It is currently rendering such service in Cyprus.

Function No. 18 - Supplement and assist other Police  
Forces when requested

140. This is a normal function of a police force and should be continued.

OTHER ACTIVITIES

141. In addition to the foregoing functions that were proposed in Mr Milt's report there are certain other activities that call for comment.

Parliament House

142. Since 1975 the Commonwealth Police Force has provided the police protective services for Parliament House. The arrangements in this regard have been made at the request of the President of the Senate and the Speaker of the House of Representatives.

143. In my view it is appropriate that the police services at Parliament House should, having regard to the national character of the Parliament, be provided by the Commonwealth Police Force. I have accordingly mentioned the function in the list set out in Appendix 9.

144. The role of the police at Parliament House is to:

- (a) maintain Law and Order
- (b) preserve the dignity of Parliament
- (c) protect the Ministers, Senators, Members and Staff at Parliament House
- (d) prevent the entry of undesirable or violent persons
- (e) control demonstrations

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- (f) facilitate the free unhindered movement of Members and Senators and also members of the public, constituents and bona fide visitors to Parliament.

145. To discharge this role while the Senate and the House of Representatives are sitting, police are deployed as follows:

Inside Parliament House - Main Door: 1 Sgt. & 1 Constable  
Kings Hall: 1 Plain clothes Constable  
House of Representatives - Public Gallery: 3 Constables  
Senate - Public Gallery: 3 Constables  
Basement 1 Constable  
Patrolling Corridors 1 Constable

Outside patrolling immediate environs - 3 Constables  
The outside patrol is maintained constantly day and night.

146. For a number of years the police presence at Parliament House consisted of only one uniformed constable stationed at the main entrance to deal with queries from members of the public and with any behaviour likely to cause a disturbance.

147. The dramatic increase in the size of the police presence at Parliament House in recent years has been attributable to the world-wide increase in demonstrations and disruptive behaviour and also to bomb scares and concern for the personal safety of Members, Senators and staff. Yet the security precautions have not gone so far as to restrict entry to Parliament House to persons with passes. While I do not propose the introduction of such a system, it is clear that without such a system there are real limits to the effectiveness of the protective service being provided by the police.

148. The number of police being employed at Parliament House is considerable. Whether it is excessive is a matter that may deserve consideration in conjunction with the President of the Senate and the Speaker. The consideration could in particular cover whether the level of police protective services provided at Parliament House could take account of the assessed security risks from time to time.

#### Central Fingerprint Bureau

149. A Central Fingerprint Bureau has been conducted for many years by the New South Wales Police Force in conjunction with that Force's own fingerprinting activities. The purpose of the Bureau is to avoid the need to refer fingerprints to individual States for checking.

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150. There are grounds on which it could be contended that the Commonwealth Police Force should take over this function from the New South Wales Police Force. For example, the conduct of the Bureau constitutes a national police service, the Commonwealth makes much use of the Bureau and contributes a major share of the cost. The Bureau also provides reciprocal services with other countries.

151. Any proposal for such a take-over would, however, give rise to a number of important questions which would call for close consideration. I accordingly make no recommendation in regard to the matter other than to suggest that it may be worthy of consideration by the Working Party on National Police Services.

#### Investigations into counterfeiting of foreign currencies

152. From time to time the Commonwealth Police conducts enquiries into activities in Australia that are concerned with the counterfeiting of foreign currencies. Australia is not yet a party to the Convention for the Suppression of Counterfeiting Currency and in consequence our law does not create offences for the activities in question. Nevertheless reciprocal assistance with other countries in these matters is plainly desirable and having regard to the nature of the activities it is appropriate that the Commonwealth Police continue to assist in this manner. I understand that the question of Australia becoming a party to the Convention is currently under consideration.

#### Court attendants

153. The Commonwealth Police Force provides officers to function as court attendants at Commonwealth Courts which request this service. Requests for similar assistance to Commonwealth Tribunals and Commissions are met.

154. Some Judges these days prefer that the role of a court attendant should be performed by a person on the staff of the Court. Where, however, the Judge wishes the function to be performed by a police officer it is, in my view, appropriate that it should be so performed.

#### Serving of process on debtors and performance of bailiff duties

155. The Commonwealth Police Force used to make considerable use of its officers for these duties. Recently it has been taking steps to withdraw from this work on the ground that its civil character renders it inappropriate for a Police Force.

156. I agree with this approach. However, the withdrawal of police officers must be dependent on the availability of

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other persons to do the work and there are some difficulties here that will need to be taken account of.

#### Advanced Driver Training School

157. There is a current proposal for an advanced driver training school in the A.C.T. The proposal envisages that this school will be controlled by the A.C.T. Police Force, with the assistance of a Board of Management, although it is to be available to train members of all appropriate organizations.

158. In addition to that proposal there has been one for the Commonwealth Police to have an advanced driving school at which it would provide training for its own members and drivers from the Transport Division of the Department of Administrative Services.

159. In the present economic circumstances there is a question whether the preferable course might be to have a single project where driver training might be provided as a national police service to the classes mentioned above and also to members of State Police Forces which do not have their own training facilities.

160. If a decision is taken to establish a single driver training school, the appropriate Police Force to control the school would seem to be the Commonwealth Police Force in pursuance of its role in relation to national police services.

#### Whether there is a coastguard role for the Commonwealth Police

161. I have considered whether there is a coastguard role for the Commonwealth Police Force.

162. In this connection separate consideration needs to be given to:-

- (a) coastal surveillance, and
- (b) law enforcement in matters such as the detection and apprehension of drug smugglers.

163. Improved arrangements to meet the increasing need for coastguard surveillance were the subject of consideration and decision in 1974 and 1975. Without detailing those arrangements it is sufficient to say that they provided no role for the Commonwealth Police.

164. The main law enforcement role in coastguard matters rests with the Customs arm of the Department of Business and Consumer Affairs. I see no justification for transferring that role to the Commonwealth Police, although if other recommendations in this report are adopted, there will be occasions when customs call in the Commonwealth Police to undertake investigative work.

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Recommended Functions

165. I recommend the functions of the Commonwealth Police Force be as set out in Appendix 9.

*H.T. Bennett*  
(H.T. BENNETT)  
4 June, 1976

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APPENDIX 1SECRET  
TERMS OF REFERENCE

Having regard to:

- (a) the policy of the Commonwealth Government not to proceed with announced proposals for the integration of the Commonwealth and Territorial Police Forces and certain sections of the former Department of Customs and Excise into a single law enforcement agency to be known as the Australia Police;
- (b) the desirability that the functions of the Commonwealth Police should be appropriate having regard to the need for those functions and the existence of State and Territorial Police Forces and other law enforcement agencies;

to enquire into and report as to the appropriate functions for the Commonwealth Police and in particular as to:

- (a) whether any of the existing functions of the Commonwealth Police might appropriately be transferred to another Police Force or law enforcement agency;
- (b) whether the Commonwealth Police might appropriately be made responsible for the performance of any new functions or functions which are at present performed by another Police Force or law enforcement agency.



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WITHDRAWN

See C.L. 1427

KEILMEYER 151

1656

Submission No. 1644

Copy No. 083

FOR CABINETAUSTRALIA POLICE BILL

A 5915

1975

Deciss 3433

This submission seeks approval to proceed with the drafting of a Bill to formalize the integration of the roles and functions of the Commonwealth Police, the Territorial police forces and some sections of the former Department of Customs and Excise by the creation of a single federal law enforcement agency - the Australia Police.

At present de facto integration has been achieved by the unified control exercised by the Minister and Department of Police and Customs over the various forces operating under separate enabling legislation. But the fulfilment of the Government's policy objective of a fully integrated national force requires overriding legislation.

The proposed Bill will create an office of Chief Commissioner who will be responsible to the Permanent Head of the Department for the operation of the Australia Police. The structure of the organisation will provide for a Head Office, and Regional Offices including separate offices for the Australian Territories. There will be an Australia Police Academy associated with a college of advanced education.

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## CONFIDENTIAL

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The Bill will make uniform provisions on such matters as appointment (including the appointment of special officers), conditions of service, resignation and retirement. Terms and conditions of employment will be brought under the control of the Public Service Board and Public Service Arbitrator. Matters relating to promotion and appeals against promotion will be modelled on the Public Service but will continue to be administered separately.

The jurisdiction of the Australia Police will encompass police activity in relation to laws of the Australian Parliament and ordinances of the Territories. As Attorney-General I am undertaking separately a revision of the criminal law applicable within the jurisdiction of the Australian Parliament, including the general criminal law and the Police Offences legislation now in force in the Australian Capital Territory and the Northern Territory.

Day to day operational control of the A.C.T. and N.T. Police (as components of the Australia Police) will be vested in a local Police Commissioner.

The legislation to set up the Australia Police should contain provisions safeguarding individual rights and establishing enforceable standards of police conduct. I contemplate that it would include provisions to the following effect:-

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- 3 -

- (a) defining the circumstances in which the police may enter and search premises, stop and search vehicles or search persons, and seize property - this would include a revision of the existing provisions under the Customs Act and under the Australian Capital Territory Police Ordinance for the issue of general warrants;
- (b) limiting the existing powers of arrest without warrant, guaranteeing access to legal advice by an arrested person and providing proper protection against compulsory self-incrimination;
- (c) clarifying powers of the police in the maintenance of public order;
- (d) providing for an independent investigation of complaints against the police.

In settling the terms of these provisions regard will be had to the requirements of the International Convention on Civil and Political Rights.

As a consequence of the creation of the Department of Police and Customs it will be necessary to amend the Customs Act in relation to the designation of the Permanent Head of the Department. This amendment and other consequential changes that may arise during

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## CONFIDENTIAL

- 4 -

the preparation of the Australia Police Bill should be introduced as cognate Bills.

Under existing arrangements prosecutions are being conducted so far as possible by officers of the Deputy Crown Solicitor's Office and not by policemen. These arrangements will continue.

It is not proposed to make any recommendations about the relationship between the Australia Police and the Australian Security Intelligence Organisation until the Royal Commission on Intelligence and Security presents its report.

Recommendation

I recommend that :

- an Australia Police Bill be drafted by Parliamentary Counsel with a view to introduction as early as possible in the Budget sittings.
- Bills amending the Customs Act and other Acts as necessary be prepared for introduction at the same time.

KEP. ENDERBY

Minister for Police and Customs

CANBERRA  
April 1975

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Cabinet; CO A 5925, Cabinet Minute, <sup>Copy No 321..</sup>1975, Decision 3433, Submission No. ~~2433~~

CABINET MINUTE

1656 -

Canberra, 14 April 1975

Australia Police Bill.

Decision No. 3433

7 pages.

Submission No. 1656 - Australia Police Bill

The Cabinet agreed that :-

- (a) an Australia Police Bill be drafted by Parliamentary Counsel along the lines set out in the Submission with a view to introduction as early as possible in the Budget Sitzings;
- (b) the Bill should include a provision for the age of retirement from the Australia Police and in this respect the Attorney-General should consider whether the age should be varied according to rank as in the case of the Defence Forces; and
- (c) Bills amending the Customs Act and other Acts as necessary be prepared for introduction at the same time.

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2.

Decision No. 3433 (cont.)

2. The Cabinet noted that :-

- (a) the Minister for Transport would consult with the Attorney-General in respect of responsibilities of the Department of Transport such as aviation security; and
- (b) the draft Australia Police Bill would be circulated by the Attorney-General to Ministers before being listed for consideration by the Legislation Committee and Ministers will have an opportunity to be present at the Legislation Committee meeting when the Bill is being considered.

  
Secretary to Cabinet

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This Submission replaces Submission No. 1644

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Submission No.  
Copy No. 36

1556

FOR CABINET  
AUSTRALIA POLICE BILL

This submission seeks approval to proceed with the drafting of a Bill to formalize the integration of the roles and functions of the Commonwealth Police, the Territorial police forces and some sections of the former Department of Customs and Excise by the creation of a single federal law enforcement agency - the Australia Police.

The integration of these law enforcement agencies was promised in the Prime Minister's policy speech in November 1972 when he said:

"The Commonwealth Police Force will be upgraded with better training, pay, and conditions to meet the growing threat of political terrorism and organised crime. Its facilities will be expanded and its role extended to that of the American F.B.I. The Commonwealth Police Force will become the key link between Australian law enforcement agencies and Interpol. The fight against international crime and the drug traffic must be primarily a national task.

Law enforcement which has been fragmented among various Commonwealth departments will be integrated by the Attorney-General, whose officers will investigate breaches of all Commonwealth laws, and initiate prosecutions, especially in the areas such as consumer protection where such action is beyond the resources of the citizen."

Then, in October 1973 the Prime Minister announced that we were proceeding with this integration.

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## CONFIDENTIAL

- 2 -

At present de facto integration has been achieved by the unified control exercised by the Minister and Department of Police and Customs over the various forces operating under separate enabling legislation. But the fulfilment of the Government's policy objective of a fully integrated national force requires overriding legislation.

The proposed Bill will create an office of Chief Commissioner who will be responsible to the Permanent Head of the Department for the operation of the Australia Police. The structure of the organisation will provide for a Head Office, and Regional Offices including separate offices for the Australian Territories. There will be an Australia Police Academy associated with a college of advanced education.

The Bill will make uniform provisions on such matters as appointment (including the appointment of special officers), conditions of service, resignation and retirement. Terms and conditions of employment will be brought under the control of the Public Service Board and Public Service Arbitrator. Matters relating to promotion and appeals against promotion will be modelled on the Public Service but will continue to be administered separately.

The jurisdiction of the Australia Police will encompass police activity in relation to laws of the Australian Parliament and ordinances of the Territories. As Attorney-General I am undertaking separately a revision of the criminal law applicable within the jurisdiction of the Australian Parliament, including the general criminal law and the Police Offences legislation now in force in the Australian Capital Territory and the Northern Territory.

Day to day operational control of the A.C.T. and N.T. Police (as components of the Australia Police) will be vested in a local Police Commissioner.

The legislation to set up the Australia Police should contain provisions safeguarding individual rights and establishing enforceable standards of police conduct. I contemplate that it would include provisions to the following effect:-

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## CONFIDENTIAL

- 3 -

- (a) defining the circumstances in which the police may enter and search premises, stop and search vehicles or search persons, and seize property - this would include a revision of the existing provisions under the Customs Act and under the Australian Capital Territory Police Ordinance for the issue of general warrants;
- (b) limiting the existing powers of arrest without warrant, guaranteeing access to legal advice by an arrested person and providing proper protection against compulsory self-incrimination;
- (c) clarifying powers of the police in the maintenance of public order;
- (d) providing for an independent investigation of complaint against the police.

In settling the terms of these provisions regard will be had to the requirements of the International Convention on Civil and Political Rights.

As a consequence of the creation of the Department of Police and Customs it will be necessary to amend the Customs Act in relation to the designation of the Permanent Head of the Department. This amendment and other consequential changes that may arise during the preparation of the Australia Police Bill should be introduced as cognate Bills.

Under existing arrangements prosecutions are being conducted so far as possible by officers of the Deputy Crown Solicitor's Office and not by policemen. These arrangements will continue.

It is not proposed to make any recommendations about the relationship between the Australia Police and the Australian Security Intelligence Organisation until the Royal Commission on Intelligence and Security presents its report.

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- 1 -

Recommendation

I recommend that :

- an Australia Police Bill be drafted by Parliamentary Counsel with a view to introduction as early as possible in the Budget sittings.
- Bills amending the Customs Act and other Acts as necessary be prepared for introduction at the same time.

KEP. ENDERBY

Minister for Police and Customs

CANBERRA  
April 1975

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